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MICHIGAN UNDER BRITISH RULE

LAW AND LAW COURTS 1760-1796

BY

The Honourable
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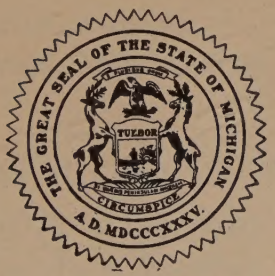

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INTRODUCTION

THE story of the territory now the sovereign State of Michigan when under British rule is for the most part to be gathered from documents in the Archives of Canada at Ottawa, many of which have been printed in the various volumes of the *Michigan Pioneer and Historical Collections.*

This is true in respect of the Law and Courts of the territory: but these documents do not give a full or connected account and something is left to conjecture, approaching more or less to certainty.

After 1788, an accurate knowledge can be had of the civil law and Courts from the extant Records of the Court of Common Pleas and of the Prerogative Court of the District of Hesse of the Province of Quebec, afterwards the Western District of the Province of Upper Canada. The Records of the former Court are to be found in the Archives of the Province of Ontario at Toronto. They were published *in extenso* in the *Ontario Archives Report* for 1917, under the editorship of Dr. Alexander Fraser the Archivist—and are here reprinted with such notes as seem to be needed to make them thoroughly understandable by the modern reader, lay or professional. The latter Records are in the Registry Office at Chatham, Ontario; photostat copies will be found in the Ontario Archives, Toronto, the Public Library (the Burton Library) at Detroit and the Riddell Canadian Library at Osgoode Hall, Toronto.

In the preparation of the following chapters, I have

received invaluable assistance from the officers of the Canadian and Ontario Archives to whom I render this tribute of thanks. My thanks are also due to Mr. C. M. Burton of Detroit who has always cheerfully and readily answered my many enquiries. I hold myself wholly responsible for the accuracy of these pages: and I have wherever possible given my authority that my accuracy may be fully tested. It is, of course, too much to hope that there are no errors in my work—but I can and do assure my readers that I have made every reasonable endeavor to have them as few and unimportant as possible.

This, my labor of love, the production of hours of relaxation from heavy professional and official duties, I am glad to offer to the people of Michigan, feeling and knowing that despite the rules of International Law, despite the difference in allegiance, we are one people in all that is really worth while, and that the story of British Law and Courts in Michigan does not in essence differ from that of American Courts but that both show forth the passion of the English speaking peoples for government by law and not by force, by righteousness and justice and not by the might of the stronger hand.

WILLIAM RENWICK RIDDELL

Osgoode Hall,
Toronto,
March 9, 1926.

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WILLIAM RENWICK RIDDELL

CHAPTER I

Historical

FOR some decades before the middle of the eighteenth century, the territory which was to become the State of Michigan was part of a vast expanse which France claimed as of her domain.

She had not, indeed, attempted general settlement—the forest was untouched and was valued as a shelter for wild animals whose fur was an object of trade; agriculture there was none except in the immediate vicinity of military and trading Posts. The Indian roamed at will over the whole territory, visited occasionally by furtrader and *coureur des bois* but unmolested by and unconscious of overlord.

The sovereignty of France, nominal and almost visionary as it was, was by no means undisputed. Britain, the Mother Country herself, was somewhat indifferent; but more than one of her American Colonies displayed a keen interest in the country to the west and did not hesitate to make claim to it.[1]

When on September 18, 1759, five days after Wolfe died victorious on the Plains of Abraham, M. "de Ramzay, Lieutenant Pour Le Roy" surrendered Quebec to Admiral Saunders and General Townshend, there was no mention of this western land; nor indeed could there be, as de Ramezay was simply "Commandant Les hautes et Basse Ville de Quebec."[2]

When, however, the following year, de Vaudreuil "Gouverneur et Lieutenant Général pour Le Roy en Canada" was forced to surrender Montreal to General Amherst, the Articles of Capitulation, September 8, 1769, contained the following Article 3:

"Les Troupes et Milices qui seront en Garnison dans le Fort de Jacques Cartier, Et dans L'Isle Ste. Helene, & Autres Forts, seront traittée de même Et auront les mêmes honeurs; Et ces Troupes Se rendront à Montreal, où aux 3 Rivieres, ou à Quebec, pour y Estre toutes Embarquées pour le premier port de Mer en France, par le plus Court Chemin. Les Troupes qui sont dans nos postes Sitüés sur Nos Frontieres, du Costé de L'Accadie, au Detroit, Michilimakinac, et Autres postes, joüiront des mêmes honeurs et seront Traittées de même."

This Article was granted subject to the terms:—

"Toutes ces Troupes ne doivent point servir pendant la presente Guerre, et mettront pareillement les Armes bas; le Reste est Accordé."

The English official translation reads thus:

The troops and militia, who are in Garrison in the Fort of Jacques Cartier, and in the Island of St. Helen, and other forts, shall be treated in the same manner, and shall have the same honours; and these troops shall go to Montreal, or the Three Rivers or Quebec; to be there embarked for the first sea port in France, by the shortest way. The troops, who are in our posts, situated on our frontiers, on the side of Acadia, at Detroit, Michilimaquinac, and other posts, shall enjoy the same honours, and be treated in the same manner,—'All these troops are not to serve during the present war, and shall likewise lay down their arms, the rest is granted.'

Article 4 indicated more specifically the evacuation by the French troops of the Western Port as well as the others; and Article 39 provided for the treatment of the evacuating soldiers.

Article 4:

Les Milices, après Estre Sorties des Villes et des Forts et Postes Cydessus, retourneront Chez Elles, sans pouvoir Estre Inquiettées, Sous quelque prétexte que ce soit, pour avoir porté Les Armes.

Art. 39:

Aucuns Canadiens, Accadiens, ni Francois, de Ceux qui sont presentement en Canada, et sur les frontieres de La Colonie du Costé de L'Accadie du Détroit, Michilimakinac, et Autres Lieux et Postes des paijs d'Enhaut, ni les Soldats Mariés et non Mariés restant en Canada, ne pouront Estre Portés, ni Transmigrés dans les Colonies Angloises, ni en L'Ancienne Angleterre, Et Ils ne pouront Estre recherchés pour avoir pris Les Armes.

Article 4 was "Accordé" by the British General but Article 39 was: "Accordé, Excepté à l'égard des Acadiens."

The English official translation reads:

Article 4:

The Militia after evacuating the above towns, forts and posts, shall return to their habitations, without being molested on any pretence whatever, on account of their having carried arms. Granted.

Article 39.

None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony, on the side of Acadia, Detroit, Michillimaquinac, and other places and posts of the countries above, the married and unmarried soldiers, remaining in Canada, shall be carried or transported into the British colonies, or to Great-Britain, and they shall not be troubled for having carried arms—'Granted, except with regard to the Acadians.'

Jeffrey Amherst was not a man to let the grass grow under his feet—the Articles of Capitulation having been agreed upon, September 8, on the next day, he informed Major Robert Rogers of his intention to send him to the

Western Country to take over the Forts occupied by the French, and, September 12, he gave him written instructions.

He was to take Captain Waite's and Captain John Hazen's Companies of Rangers (New York and New Hampshire Militia) and proceed in whale boats up the St. Lawrence to Fort William Augustus (formerly Fort Levis) on Isle Royal now Chimney Island a few miles below the present city of Ogdensburg, taking with him Joseph Poupoa,[3] alias La Fleur, an inhabitant of Detroit, and Lieutenant Brehme,[4] Assistant Engineer—thence by the north shore of Lake Ontario to Niagara, then to transport the boat across the carrying place to Lake Erie, proceed west on Lake Erie to Presque Isle (now Erie, Pa.)—leave there the whaleboats and take a small detachment and join General Robert Monkton. Despatches were given Rogers for Monkton who was to direct Rogers in what manner to take over "the French Posts at Detroit, Michlimakana or any others of that district."[5]

About noon of September 13, 1760,[6] Rogers embarked at Montreal (with Captain Brewer, Captain Waite, Lieutenant Brehme, Lieutenant Davis and two hundred Rangers) in fifteen whaleboats: camping that night at Lachine, they proceeded westward.

After a somewhat interesting voyage he reached Detroit, November 29; he had previously sent forward Lieutenant Brehme to de Belêtre, the French Commandant, with the information that Canada had been surrendered and that he was bringing Vaudreuil's letter to the Commandant directing him to deliver up his Fort:

later he had sent Captain Campbell with a copy of the Articles of Capitulation and Vaudreuil's letter. Accordingly the French Commander could do nothing but obey instructions[7], and Detroit came under British rule, November 29, 1760.

The French soldiers were sent off under the charge of Lieutenant Holmes and thirty Rangers to Philadelphia —other soldiers were detached for Forts Miami and Gatanois, and for the French troops on the Ohio.

Early in December Rogers made his way by Lake St. Clair into Lake Huron intending to take over the Fort at Michillimackinac; but on the 16th, the cakes of ice barred his way: he consulted the Indians as to the possibility of reaching the Post by land but they declared it impossible without snowshoes; and to their great mortification Rogers and his party were obliged to return to Detroit—even then, the ice obstructed them so much that with the greatest diligence and after great fatigue they did not arrive until December 21.

Rogers now disappears from the scene as he went to Albany and Philadelphia and then to New York, arriving at the last named place, February 14, 1761.

But a detachment of the 60th Regiment, the Royal Americans, took over Michillimackinac shortly after the lake opened in 1761: and so began the first period[8] of British rule over the whole of Michigan.

First Period of British Rule: 1760-1763

Britain had become the successor to the rights of France in this territory by reason of the Capitulation

by Vaudreuil: but there was as yet no formal Cession and consequently she held simply by the power of the sword. This was the Régime Militaire or Règne Militaire for all Canada and its Dependencies. In 1762, the Seven Years War came to an end: and, February 10, 1763, was concluded at Paris the "Definitive Treaty of Peace and Friendship between His Britannick Majesty, the Most Christian King [of France] and the King of Spain." By Article IV of this Treaty it is stated:

De plus, Sa Majesté Très Chretienne cede & garantit à Sa dite Majesté Britannique, en toute Proprieté, le Canada avec toutes ses Dependances, ainsi que l'Isle du Cap Breton, & toutes les autres Isles, & Côtes, dans le Golphe & Fleuve St Laurent, & generalement tout ce qui depend des dites Pays, Terres, Isles & Côtes avec la Souveraineté, Proprieté, Possession, & tous Droits acquis par Traité, ou autrement que le Roy Très Chretien et la Couronne de France ont eus jusqu' à present sur les dits Pays, Isles, Terres, Lieux, Côtes & leurs Habitants, ainsi que le Roy Très Chretien cede & transporte le tout au dit Roy & à la Couronne de la Grande Bretagne, & cela de la Maniere & de la Forme la plus ample, sans Restriction, & sans qu'il soit libre de revenir sous aucun Pretexte contre cette Cession & Garantie, ni de troubler la Grande Bretagne dans les Possessions sus-mentinnées.

The English official translation reads:

Moreover, his Most Christian Majesty cedes and guaranties to his said Britannick Majesty, in full right, Canada, with all its dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the gulph and river of St. Lawrence, and in general, every thing that depends on the said countries, lands, islands and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their

inhabitants, so that the Most Christian King cedes and makes over the whole to the said King, and to the Crown of Great Britain, and that in the most ample manner and form, without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned.[9]

The Cession of "le Canada avec toutes ses Dependances" carried the Michigan country with its Posts which were considered dependencies of Canada. The ownership by Britain of all this land was now *de jure* as well as *de facto*.

Second Period of British Rule: 1763-1774

The necessity of military rule having disappeared, the problem was presented to the Imperial statesmen at London what was to be done with the new territory. The Earl of Egremont,[10] Secretary of State since 1761, when he had succeeded the elder William Pitt, submitted to the consideration of the Lords of Trade amongst other important matters:

By what Regulations, the most extensive Commercial advantages may be derived from those Cessions, and

How those Advantages may be rendered most permanent & secure to His Majesty's Trading Subjects.

Differentiating the immense territory ceded by the Treaty and directing attention to North America, the Secretary of State proceeded:

The Questions which relate to North America in general, are,

1st What New Governments should be established & what Form should be adopted for such new Governments? and where the Capital, or Residence of each Governor should be fixed?

2dly What Military Establishment will be sufficient? What

new Forts should be erected? and which, if any, may it be expedient to demolish?

3dly In what Mode least Burthensome and most palatable to the Colonies can they contribute towards the Support of the Additional Expense, which must attend their Civil & Military Establishment, upon the Arrangement which Your Lordships shall propose.

He further said:

The Second Question which relates to the Security of North America, seems to include Two Objects to be provided for: The first is, the Security of the whole against any European Power; The next is the Preservation of the internal Peace and Tranquility of the Country against any Indian Disturbances. Of those Two Objects, the latter appears to call more immediately for such Regulations and Precautions as Your Lordships shall think proper to suggest &c.

Tho' in order to succeed effectually in this Point it may become necessary to erect some Forts in the Indian Country with their Consent, yet His Majesty's Justice & Moderation inclines Him to adopt the more eligible Method of conciliating the Minds of the Indians by the Mildness of His Government, by protecting their Persons & Property & securing to them all the Possessions, Rights and Privileges they have hitherto enjoyed, & are entitled to, most cautiously guarding against any Invasion or Occupation of their Hunting Lands, the Possession of which is to be acquired by fair Purchase only.

Of course the statement that the King was inclined to the course mentioned was but the constitutional method of saying that such was the inclination of the Ministry.

Whether influenced by the hint or not, the Lords of Trade reported that while "in order to invite new settlers to risque their persons and property in taking up new Lands as well as to secure the old inhabitants

in the enjoyment of those rights and privileges reserved to them by the Treaty. . . . . (a) regular government appears both from reason and experience of absolute necessity" nevertheless "no such regular civil Government is either necessary or indeed can be established where no perpetual Residence or planting is intended". Coming down to particulars, their Lordships said:

> And such we apprehend will be the Case of that Territory in North America which in Your Majesty's Justice and Humanity as well as sound Policy is proposed to be left, under Your Majesty's immediate Protection, to the Indian Tribes for their hunting Grounds; where no Settlement by planting is intended, immediately at least, to be attempted; and consequently where no particular form of Civil Government can be established. In such Territory we should propose, that a free Trade with the Indian Tribes should be granted to all Your Majesty's Colonies and Subjects under such Regulations as shall be judged most proper for that End, and under the protection of such Military Force, to be kept up in the different Posts & Forts in the Indian Country as may be judged necessary, as well as for the Protection of Trade and the good Treatment of the Indians as the Maintenance of Your Majesty's Sovereignty and the general defence of North America.

Without going into minutiae, they recommended:

> That the new Government of Canada should be restricted, so as to leave on the one hand, all the Lands lying about the great Lakes, and beyond the Sources of the Rivers which fall into the River St Lawrence from the North to be thrown into the Indian country.

Along with their report the Lords of Trade submitted a map showing what territory it was proposed should be placed under regular civil government and opened for settlement and what should be left for the Indians.

Consequently when a "Government of Quebec" was established, it was not permitted to cover this Western country but was made to terminate on the west on a line drawn from the southern end of Lake Nipissing to the point at which the 45° parallel of North Latitude crosses the St Lawrence (near the present Ontario Town of Cornwall). As Egremont expresses it: "All the countries beyond such Bounds be . . . . . for the present left unsettled for the Indians to hunt in, but open to a free Trade for all the Colonies".

The Lords of Trade[11] recommended: .

that a Proclamation be immediately issued by Your Majesty as well on Account of the late Complaints of the Indians, and the actual Disturbances in Consequence, as of Your Majesty's fixed Determination to permit no grant of Lands nor any settlements to be made within certain fixed Bounds, under pretence of Purchase or any other Pretext whatever, leaving all that Territory within it free for the hunting Grounds of those Indian Nations Subjects of Your Majesty, and for the free trade of all your Subjects, to prohibit strictly all Infringements or Settlements to be made on such Grounds.

The celebrated Royal Proclamation of October 7, 1763, which announced the creation by Letters Patent of the new Government of Quebec (as well as of those of East Florida and West Florida) contained the following:

We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the

Rivers which fall into the Sea from the West and North West as aforesaid.

And We do hereby strictly forbid, on Pain of Our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or to be purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

As a consequence Michigan continued in this Period of British Rule under the same policy as under the French, when settlement was discouraged and the fur trade all important.[12]

While in the "Government of Quebec", "all Persons Inhabiting in or resorting to" it were assured by the Royal Proclamation of October 7, 1763, that they might confide in the "Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of England", there was no such assurance for those in the country reserved for the Indians, nor was there any formal provision for the law in that country.

Third Period of British Rule: 1774-1788

It is not important for our subject to consider the events leading up to and the causes of the "Quebec Act"[13] of 1774. This Act contained a Preamble that the Royal Proclamation of October 7, 1763 had left several settlements of the Subjects of France who

claimed to remain there under the Treaty of 1763 "without any Provision being made for the administration of Civil Government therein", which was undoubtedly true. The Act then provided for an extension of the limits of the Province of Quebec to the point on the south bank of Lake Erie, "which shall be nearest to the North Western angle of the . . . . Province of Pennsylvania and thence by a right Line, to the said Northwestern Angle of the said Province and thence along the Western Boundary of the said Province until it strike the River Ohio; and along the Bank of the said River Westward, to the Banks of the Mississippi, and Northward to the Southern Boundary of the Territory granted to the Merchant Adventurers of *England* trading to *Hudson's Bay*".[14]

Thus Michigan came under civil rule.

A provision in the Quebec Act which probably had more effect in the original Province than in the territory annexed by the Act was that the Criminal Law of England should be enforced, but that "in all Matters of Controversy relative to Property and Civil Rights, Resort shall be had to the Laws of Canada as the Rule for Decision of the same."

The result was that the new country like the old was to be governed in criminal matters by the laws of England, but in civil matters by the old French Canadian law based as it was on the Coutume de Paris.[15]

Now too for the first time Michigan was to have the benefit of regular civil courts of justice. I leave to a future chapter the consideration of the particular Courts, &c: but it is proper to say that the new country

on the coming into force of the Quebec Act became *ipso facto* part of the District of Montreal,[16] one of the two Districts into which the old Government or Province of Quebec had been divided.

Fourth Period of British Rule: 1788-1792

As will be more fully detailed in a succeeding chapter the litigation of Detroit and other parts of the present Michigan had to be carried on at Montreal—this was an intolerable condition of affairs and Sir Guy Carleton, Lord Dorchester, Governor in Chief had an Ordinance passed, April 30, 1787, containing the following provisions:

> Whereas there are many thousands of Loyalists and others settled in the upper countries above Montreal, and in the bays of Gaspy and Chaleurs below Quebec, whose ease and convenience may require, that additional districts should be erected as soon as circumstances will permit. *It is enacted and ordained by the authority aforesaid,* that it may be lawful for the governor or commander in chief for the time being, with the advice and consent of the council, to form by patent under the seal of the province, one or more new districts, as his discretion shall direct, and to give commission to such officer or officers therein as may be necessary or conducive to the ease and convenience of his majesty's subjects residing in the remote parts of the province.

Dorchester did not delay to exercise the powers thus conferred upon him. On July 24, 1788, he issued Letters Patent creating five new Districts—that furthest to the East being called Gaspé, (now in the Province of Quebec), the other four of territory afterwards to become the Province of Upper Canada and called (beginning at the East) Luneburg (to the River

Gananoque), Mecklenburg (to the River Trent), Nassau "so far Westerly as to a North and South line, intersecting the extreme projection of Long-point into the Lake Erie, on the Northerly side of the said Lake Erie; and also one other District, to be called the District of Hesse, which is to comprehend all the residue of our said Province, in the Western or inland parts thereof, of the entire breadth thereof, from the Southerly to the Northerly boundaries of the same".[17]

The American Revolution had been successful, the Independence of the United States had been acknowledged and the Definitive Treaty of Peace, signed at Paris, September 3, 1783, had allotted to the new nation the territory to the right of the middle of the Lakes Ontario, Erie, Huron and Superior and of the connecting Rivers. This would clearly give to the United States the present Michigan.

Article IV of the Treaty, however, expressly stipulated:—

> It is agreed that Creditors on either side shall meet no lawful impediment to the recovery of the full value in Sterling money of all *bona fide* debts heretofore contracted.[18]

Some of the Provinces which had become States, had passed and continued to insist upon legislation which prevented the British creditor receiving payment of his debts in full in sterling money: the "United States", united as yet only in name—they were still only the "United States", not "the United States"—could not interfere with "Sovereign States"—the debts remained unpaid and Britain kept possession of the Border Posts, Michillimackinac, Detroit, Niagara, Oswegatchie, &c., and the adjoining territory. The United States did not

attempt to force surrender of these Posts; and Michigan continued to be *de facto* under British rule.[19]

As a consequence, the District of Hesse included the Western territory west of the Lakes Huron, St. Clair and Erie which had previously formed part of the District of Montreal. This District of Hesse like the others had its own Courts distinct from Quebec and Montreal.

Fifth Period of British Rule: 1792-1794

It was not long before it became impracticable to administer the enormous and unwieldy Province of Quebec as a unit. The success of the American Revolution had sent into voluntary exile thousands who had been accustomed to English Law and customs, who desired to live under the old flag and preferred to give up everything rather than prove disloyal. There were irreconcilable differences between these "United Empire Loyalists", mostly English speaking and Protestants and their fellow subjects of French origin and generally Roman Catholic; it was determined to divide the Province of Quebec into two Provinces, Upper Canada and Lower Canada, and to give to each, practical control over its own law and destiny. In Upper Canada were to be most of the English speaking newcomers and in Lower Canada, most of the French speaking "Old Canadians."

An Order in Council was passed, August 24, 1791, forming the two new Provinces; the Canada or Constitutional Act, (1791), 31 George III, c. 31, (Imp.), provided for their government and constitution. A Royal

Warrant was issued to "the Governor or Lieutenant Governor of the Province of Quebec or the person administering the Government there to fix and declare such day as they shall judge most advisable for the commencement of the Act not later than December 31, 1791." In the absence of Lord Dorchester, General (Sir) Alured Clarke, Lieutenant Governor at Quebec, issued, November 18, a Proclamation fixing Monday, December 26, 1791, as the day for the commencement of the legislation.[20] Upper Canada was to contain all the territory west of a certain stated line—for the most part the Ottawa River formed the eastern boundary, but the line left the Ottawa a short distance north of the St. Lawrence and veered to the west, following the line of the eastern boundary of Dorchester's District of Luneburg. This new Province containing all of the former Province of Quebec as formed by the Quebec Act 1774 west of this line, therefore contained and was composed of Dorchester's four Districts of Luneberg, Mecklenburg, Nassau and Hesse.

At the first session of the first Parliament of Upper Canada an Act was passed abolishing the French law and providing "That from and after the passing of this Act, in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of England as the rule for the decision of the same".[21] The existing Courts, however, were not interfered with.

Another Act of the same session changed the name of the District of Hesse to the Western District,[22] and directed the erection of a Gaol and Court House for

each District, those for the Western District to be built "as near to the present Court House as conveniently may be".

Sixth Period of British Rule: 1794-1796

Michigan with the rest of Upper Canada from the Session of 1792 enjoyed the English Law, both civil and criminal.[23] The first Lieutenant Governor of the Province of Upper Canada, Colonel John Graves Simcoe, was an Englishman; and he desired to make his Province as nearly as possible a transcript of England in every way. The system of Courts in existence was the old French system of Local Courts for each District and it was determined to make a change and form a central Court of Provincial jurisdiction after the English model.

Accordingly in 1794 was passed an Act to establish a Superior Court of Civil and Criminal jurisdiction—the first of our Judicature Acts. This abolished the Court of civil jurisdiction in the District of Hesse as in other Districts and gave the new Court of King's Bench for the Province of Upper Canada full civil and criminal jurisdiction.[24]

This period was short. The situation between Britain and the United States was intolerable and almost certain to lead to war—indeed, more than once, it was the great self-restraint on one side or the other which prevented open hostilities.

Washington with characteristic wisdom—and it may be added characteristic courage—sent to London, Chief

Justice John Jay to negotiate a settlement of the matters in difference; the negotiations were successful, it was agreed that the United States should pay the debts, payment of which the British creditors had been by the law of American States prevented from obtaining, and Britain should deliver up the Border Posts not later than June 1, 1796.[25]

There was a trifling delay but by the end of the summer of 1796 the United States had received the territory allotted to her by the Treaty of 1783—and so ended British Rule in Michigan.[26]

Recapitulation

Period	Date	Remarks.
1—	1760-1763—	Régime Militaire, Martial Law.
2—	1763-1774—	Still governed from Posts.
3—	1774-1788—	Coutume de Paris and English Criminal Law: Courts in Montreal.
4—	1788-1792—	Separate Courts—same law.
5—	1792-1794—	Under Upper Canada until October 15, 1792, same law: English Law, Civil and Criminal thereafter.
6—	1794-1796—	English Law, Civil and Criminal.

CHAPTER II

First Period of British Rule: 1760-1763

AS we have seen, during this period, Canada was under the Régime Militaire—the conqueror ruled the whole country by Martial Law. It is the undoubted right of a victorious nation to govern conquered territory according to the will of the Commanding Officer of its armed force in that territory; and such officer is subject to the restraint of the instructions of his superiors only and in no way responsible to the conquered, who are allowed no say in the matter. He must be guided by the military necessities of his position and his own prudence and judgment, and need pay no attention to the desires, sentiments, feelings or customs of the people he governs. Ordinary humanity, of course, is always presumed, unnecessary cruelty and wanton affront are never to be expected. He must, too, give full effect to any Agreement or Articles of Capitulation, referring to his district.

The Commanding Officer may erect such Courts as he sees fit: such Courts, however, by whatever name they may be called, are in law and in fact Military not Civil Courts.[1]

In the three Districts of Nouvelle France, Quebec, Three Rivers and Montreal, the British Governors established Courts—General James Murray in Quebec and its neighborhood even before the Capitulation of Montreal. After the Capitulation of Montreal, the Courts at

Quebec previously established were replaced by other Courts not very dissimilar; and the like Courts were established in their Districts by the Governors of Three Rivers and Montreal.[2]

While the authority of the Commanding Officer is theoretically unlimited (except as above stated), it always has been and is the British custom to allow the conquered people full enjoyment of their own law and customs so far as it will not prejudice the military situation or too much shock the conqueror. Accordingly, the French law and French customs would in any case have been allowed to govern even in these Courts composed (at least in the Appellate branch) of British Army officers: but the French Canadians had an even stronger position.

Vaudreuil had stipulated in Article XLII of the proposed terms of Capitulation:

> Les francois et Canadiens Continüeront d'Estre Gouvernés Suivant La Coutume de Paris et les Loix et Usages Etablis pour ce pays; Et Ils ne pouront Estre Assujettis à d'Autres Impots qu'a Ceux qui Estoient Etablis sous la domination françoise.

The English official translation reads:

> The French and Canadians shall continue to be governed according to the custom of Paris, and the Laws and usages established for this country, and they shall not be subject to any other imposts than those which were established under the French Dominions.—'Answered by the preceding articles and particularly by the last.'

This had not, indeed, been specifically agreed to—Amherst replied "Repondu par les Articles précedents et particulièrement par le dernier"—and the answer to the preceding Article was "Ils deviennent Sujets du

Roy"[3]—thereby retaining the absolute power as to the law to be enforced: but the request had not been specifically denied. The French Canadians had a right to expect and, beyond question, they were accorded the substantial continuance of the enjoyment of their own laws and customs.

There is no record of the establishment of similar Courts in Detroit and Michillimackinac "and their dependencies", i. e. the adjoining country so far as it was settled—but there can be no doubt that the non-British people there had the full benefit of their former law in all civil matters.

In criminal matters the English law was ordinariiy applied in territory under military rule—to many who have been taught to look upon the Common Law of England in its criminal aspect as wantonly cruel, it has seemed strange that the English insisted upon it. But cruel as it undoubtedly was, it was less so than the contemporary criminal law in Civil Law countries such as France, with its Rack, Judicial Question, Arbitrary Imprisonment, Presumption of Guilt, &c., &c. Consequently it is not to be wondered at that the English always insisted on their own criminal law.

I have been able to find the record of only one criminal case at Detroit during this Period: but as that throws full light over the procedure, I shall give it rather *in extenso.*

In the Summer of 1762 a Mr. Clapham, a merchant of Fort Pitt, (Pittsburg) visiting Detroit, bought there two Indian slaves, Panis as they were generally called (with various spelling, Pawnee, Pany, Pawny, &c.,) a

man and a woman. Leaving Detroit with them for home he imprudently ventured alone with them from Sandusky in a canoe: near Presqu'isle, they met some Indians and Clapham gave them all rum: then the slaves attacked and barbarously murdered him: they plundered his effects and burnt his papers, cut off his head, and threw his body into the river—then fled to the Indians. Whether because they were of the despised race, the Pawnees, or for other reasons the Indians expressed utter detestation of the act—they delivered the offenders to Colonel Donald Campbell, the Commander of the British Forces at Detroit and earnestly entreated that they be burned, offering themselves to put them to that death if they might be permitted "as a proof of their wrath against the perpetrators of so great a crime". The unfortunate Panis vainly accused the Indians of inciting or committing the crime; but at length made a full confession. Colonel Donald Campbell as Commandant immediately reported the facts to Colonel Henry Bouquet, he to Sir William Johnson, Superintendent of Indian Affairs, and he, October 1, 1762, informed Sir Jeffery Amherst the Commander-in-Chief at New York. Sir Jeffery while glad that the Indians should "show a proper detestation of the horrid murder", thought that "the bringing of the murderers to condign punishment by the sentence of our own Garrison must . . . . . have a better effect than leaving them to the Wild Fury of the Indians"—he accordingly ordered Major Gladwin, who had succeeded Campbell as Commandant, to try them by Court Martial. Before the order reached Detroit the male Panis made his

escape from the guard and got into the Illinois country. The woman, however, was tried and convicted of Murder; sentenced to be hanged, she was publicly executed. The man is not known to have ever been recaptured.[3a]

Second Period of British Rule: 1763-1774

The Royal Proclamation of October 7, 1763, contained the King's assurance that until there should be summoned a Legislative Assembly of Representative of the People, "all persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England."[4] But "Our Said Colonies" in this Proclamation did not include Michigan—the Colonies spoken of were East and West Florida, Grenada and Quebec—and Quebec as we have seen, extended no further west than a line drawn from the southern end of Lake Nipissing to the present Cornwall in the Province of Ontario.

Accordingly even the partial introduction at that time into old Canada, of the English law did not affect the Western Country.

Nor was there anything in the Treaty of 1763 which dealt with the laws to be administered in the ceded territory—and the ordinary rules of International Law applied. Consequently the previous state of law continued and Martial Law continued to prevail in fact as in the First Period; the inhabitants—such at least of them as were French—had their own law and customs

in all civil matters without substantial interference by the military authorities.

There are no court records extant of any legal proceedings in this period any more than in the first.

Apparently a M. Pierre St. Cosme[5] had acted as a Judge in the First Period, probably a person who had been appointed by the Commander (or Lieutenant Governor as he was often called): Gabriel Le Grand[6] was appointed in his place at least as early as May, 1763. We find in the Pontiac Manuscript under date, May 20, 1763, a statement that "Mr. Le Grand . . . has been substituted as judge in the place of Mr. St. Cosme." Of course these appointments were perfectly legal and the "Judges" were in law simply military officers acting for and under the authority of the Commander of the Forces.

April 21, 1767, Philippe Dejean received a Commission as Justice of the Peace from Captain George Turnbull, Commandant of Detroit and its Dependencies, and, in 1767, the Commandant Major Bayard gave him the Commission as "Second Judge" to hold a "Tempery Court of Justice to be held twice in every month at Detroit to Decide on all actions of Debt, Bond, Bills, Contracts and Trespasses above the value of 5 £ New York Currency".[7] The people were not satisfied with this: we find that in 1768, the inhabitants of Detroit sent a Petition to General Thomas Gage asking for the appointment of Philippe Dejean as a Judge as he understood English as well as French[8]. So far as is known, he did not receive a Commission from Gage; but it is certain that he continued to act as Judge in civil matters

as he had the right to do though in law his was a Military Court. This did not in the least interfere with the right of the Commandant himself to sit as a Judge.[9]

There is no contemporary account of the administration of justice at Michillimackinac—it was, of course, military.

CHAPTER III

Third Period of British Rule: 1774-1788

THIS was the first period of civil government.[1] The Quebec Act of 1774 as we have seen, made the Western Country part of the Province of Quebec and of the District of Montreal in that Province, that District being all of the Province west of the River Godfroy and St. Maurice. Thereby this whole western country automatically came under the French Canadian law in civil cases; the law in criminal cases not being changed, these were governed by the English law as introduced into Canada by the Royal Proclamation of October 7, 1763. The English criminal law was not codified, but it was fairly well established by decisions. The French Canadians resented the imposition upon them of the English civil law so foreign to their traditional and familiar customs, but except by a few Seigneurs who objected to its levelling tendencies, there was little complaint of the English criminal law. Accordingly when the Quebec Act was projected to satisfy them, it was determined to leave the English law in criminal cases but "that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the laws of Canada, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by His Majesty, His Heirs, and Successors, shall, with respect to such property and Rights be determined agree-

ably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinances that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief for the Time being, by and with the advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned."[2]

The French-Canadian or Quebec Laws

The former law of Nouvelle France, now reestablished in civil matters throughout the enlarged Province of Quebec (including Michigan), was in the last analysis based upon the Civil Law of Rome. Almost every part of France had its own Coutume or body of Laws, all based upon the Civil Law but differing from each other in more or less important particulars.

When the time came to determine the law of Nouvelle France, the Coutume de Paris, Custom of Paris and the surrounding country, was naturally selected for the new law—and it was decided to constitute the law of Nouvelle France of the Coutume de Paris, and the Lois et Ordonnances which prior to 1663 had modified or supplemented it.

When in 1663, Louis Quartorze accepted the demission of Canada from La Campagnie de la Nouvelle France, he at once passed a decree—Édit de Creation du Conseil Superieur de Quebec—forming a "Conseil souverain", and to it giving power and authority to take cognizance of all causes civil and criminal "pour y juger souverainment et en dernier ressort, selon les Lois et Ordonnances de notre Royaume et y proceder autant

qu'il se pourra, en la forme et manière qui se pratique et se garde dans le ressort de notre Cour de Parlement de Paris"—to adjudicate therein without appeal according to the laws and ordinances of our realm and to proceed therein so far as is possible according to the forms and practice followed in Our Court of Parlement of Paris.[3]

In the following year, 1664, in the Decree for the establishment of the Compagnie des Indes Occidentales, it was provided as follows:—

Article xxxiii

Seront les Juges établis en tous les dits lieux, tenus de juger suivant les Loix et Ordonnances du Royaume, et les Officiers de suivre et se conformer à la coutume de la prêvôté et vicomté de *Paris,* suivant laquelle les habitants pourront contracter sans que l'on y puisse introduire aucune autre coutume pour éviter la diversité.[4]

There are to be Judges established in all the places aforesaid[5] bound to adjudicate according to the laws and ordinances of the Realm, and the officers to conform to the Custom of the Provostship and Viscounty of Paris. according to which the inhabitants may contract without anyone being permitted to introduce any other custom whatsoever—this being to avoid diversity.

It is wholly unnecessary and outside the scope of this work to enter into the controversy as to the exact time and manner of the introduction of the Coutume de Paris —the question is of only antiquarian interest.[6] It is sufficient to say that this caput ommium hujus regni et totius etiam Belgicae consuetudinum was reintroduced into Canada in its civil aspect by the Quebec Act of 1774.

After the Treaty of Paris, 1763, the Governor at Quebec waited for the eighteen months to expire which were allowed by the Treaty for all those wishing to depart from the Colony to do so—and then by an Ordinance of September 17, 1764, he established certain Courts. These at the time had, of course, no jurisdiction in Michigan, and before the Quebec Act, another Judicature Ordinance had been passed, that of February 1, 1770, amending the former Ordinance. There was first and highest the Superior Court, the Court of King's Bench, presided over by the Chief Justice of the Province, an Imperial appointee and at this time and for long afterwards a member of the English Bar. This Court was given

power and authority to hear and determine all criminal and civil Causes, agreeable to the Laws of England, and to the Ordinances of this Province; and from this Court an Appeal lies to the Governor and Council, where the Matter in Contest is above the Value of Three Hundred Pounds Sterling; and from the Governor and Council an Appeal lies to the King and Council, where the Matter in Contest is of the Value of Five Hundred Pounds Sterling or upwards.

In All Tryals in this Court, all His Majesty's Subjects in this Colony to be admitted on Juries without Distinction.

And His Majesty's Chief-Justice, once in every Year, to hold a Court of Assize, and General Gaol-Delivery, soon after Hillary Term, at the Towns of Montreal and Trois-Rivieres, for the more easy and convenient Distribution of Justice to His Majesty's Subjects in those distant Parts of the Province.[7]

Then in each of the two Districts of Quebec and Montreal[8] there was a separate Court of Common Pleas, an Inferior Court with original civil jurisdiction of its own.

These Courts were "open at all times through the

Year, except on Sundays, and at Seed time, a Month at Harvest, and a Fortnight at Christmas and Easter, and except during such Vacation as shall be from Time to Time appointed by the Judges for making their respective Circuits throughout the Province, Twice in every Year."[9] Technically and in strict law, military rule was considered to cease and civil rule take its place in Michigan from the passing of this Act in 1774, but *Necessitas non habet legem* and it is certain that much the same condition of affairs continued for some time. The distance from Montreal made it necessary that some kind of Court should sit in Detroit.

Philippe Dejean certainly continued to act as Judge in civil matters under his Commission as Justice of the Peace.[10] The Commandant himself seems to have performed the function of Judge in some cases—thus we are told concerning Henry Hamilton who was sent to Detroit as Governor in 1775, that he "acted as magistrate, and took cognizance of all civil cases under £10 York currency. An orderly sergeant acted as constable. No process was issued, but the orderly commanded the debtor to appear when a hearing was summarily had, and if the case was found against the debtor, he was ordered to pay the claim; and if he could, yet refused, he was sent to the guard-house until he did." Judge May gives a curious instance of this summary justice:

> One Grauchin owed me a debt. I complained to Governor Hamilton, who sent for him. He came, and being asked if he had anything to say against the debt, he said no. He then ordered him to give me an old negro wench in payment, and she served me twenty-five years.[11]

It seems to have been thought that the provisions of the original Judicature Ordinance of September 17, 1764, were in force in the Western Country. Under that Ordinance any one Justice of the Peace could hear and determine cases under £5 Que. Cy., and any two Justices cases under £10 Que. Cy.: but these provisions had been grossly abused and were annulled by the Ordinance of February 1, 1770 even for Quebec.

The legal incapacity of Governor or Justice of the Peace to hear and determine disputes was discovered before much time had elapsed and many were the complaints and petitions to the administration.

Sir Guy Carleton (afterwards Lord Dorchester) when he received his new Commission as Governor of the enlarged Province of Quebec received with his Commission, Instructions dated January 5, 1775, which directed him, Sec. 15 (in general) to establish a Provincial Court, the Court of King's Bench, for cognizance of all Pleas of the Crown (i.e., Criminal cases) in the Province—also to divide the Province into two Districts, those of Quebec and Montreal and to establish in each District a Court of Common Pleas with jurisdiction over all civil causes "cognizable by the Court of Common Pleas in Westminster Hall". He was instructed also that there should be an "Inferior Court of Criminal and Civil Jurisdiction in each of the Districts of Illinois, St. Vincennes, Detroit, Missilimakinac and Gaspée by the name of the Court of King's Bench for such District"—the Judges of these Inferior Courts to have the same jurisdiction in Civil matters as any other Judge of a Court of Common Pleas and in Criminal matters the

same as the Chief Justice of the Province except that in treason, murder and other capital felonies they should only arrest and commit to the gaols of Quebec or Montreal to be tried before the Chief Justice: Appeals in matters over £10 to be taken to the Governor-in-Council with a further appeal to the King in Council in cases of £500 and upwards. The importance attached to these Inferior Courts is manifested by another reference to them in Section 31; and Section 56 provides a salary of £100 for "one Judge of the Inferior Courts of King's Bench and Common Pleas at each of the . . five Posts" with £50 of a salary to an Assistant or Assessor.

The Courts of Common Pleas at Quebec and Montreal were each to have three Judges, "two of our natural-born subjects of Great Britain, Ireland or our other Plantations and one "Canadian." The Inferior Courts were to have only one, "a natural-born subject of Great Britain, Ireland or our other Plantations and . . . one other Person being a Canadian by the name of Assistant or Assessor to give advice to the Judge in any manner where it may be necessary."

The disturbance in Colonial affairs by the open hostilities of the American Revolutionaries rendered it necessary to place the legal system on a provisional basis for the time being—three Judges were, April 10, 1775, appointed for Quebec and three for Montreal under the name of Conservators of the Peace, but nothing was done for Detroit or the other four proposed Districts. Nor did the Western Country obtain relief when action was taken.

The invaders having been driven from the Province,

Carleton proceeded to pass an Ordinance in regular form, February 25, 1777. This divided the Province into two Districts, Quebec and Montreal, as before, established a Court of Common Pleas for each to sit at the two cities respectively at least one day each week for causes over £10 Sterling and another for those of or under £10. Above £10, two Judges were necessary and an appeal lay to the Governor and Council with a further appeal to the King in Council where involving £500 Sterling or over. Up to £10, one Judge was sufficient and there was no appeal (unless there was a question of duty payable to the King, fee of office or annual rents, &c., in which case no matter what the immediate value, an appeal lay to the Governor in Council and to the King in Council). By an Ordinance of March 4, 1777, a Court of King's Bench was established for the Province with Criminal Jurisdiction to hold two sessions in Quebec and two in Montreal each year: also a Court of Quarter Sessions was established for each of the two Districts to sit four times a year. Nothing was done toward carrying out the erection of inferior Courts in the five out-lying districts; and Detroit remained in the District of Montreal.[12]

It would be far from fair to blame the Imperial Government for this apparent neglect of an important district. When the Quebec Act was passed, William Hey, the Chief Justice of Quebec, was in England. He had had considerable experience in Canada, having been appointed in 1766 in place of the first Chief Justice, William Gregory; and he was now consulted by Lord Dartmouth, Secretary of State for the Colonies. Hey

drafted an Ordinance to be passed by the Governor and Council of Quebec and Dartmouth sent it to Carleton for his information and guidance.

The Draft Ordinance[13] recited:

> And Whereas many Parts and Places of the Province now in an advanced State of Cultivation and Settlement particularly the Forts of Michilimacinac and Detroit and the Settlement at Gaspée in the Bay of Chaleurs on the Coast of Labrador in some of which large Fisheries are established and in others a very extensive and profitable Trade is carried on are so great a distance from the Court of Common Pleas herein before established as to be in a manner almost wholly deprived of the protection, benefits and advantages of their Jurisdiction and Authority.
>
> And it being of the utmost Importance to the public Peace, Order and good Government of the People the Security of their Property and the Maintenance of their just Rights and dues that Courts of Criminal and Civil jurisdiction should be established in such Places.

Then a provision was made for a separate Court at "Missilimaconac, Detroit, Gaspée, & the Illinois and such other places as shall be necessary." This Court was to be called the "Court of King's Bench for the Township (or District) of—" and to have Civil and Criminal Jurisdiction within its District, which was to be carefully described. The Civil Jurisdiction was to be complete; but in Criminal cases, in "Treason Murder or other capital Felonys" the Judge could not try but could only send the accused with accomplices and accessories to Quebec for trial before the Chief Justice and bind over the Prosecutor and his Witnesses to attend and give evidence at such trial.

The Judge was to hold a Court of Oyer and Terminer and General Gaol Delivery four times every year for

minor offences "at which days and times the Court shall sit and continue to sit till every Prisoner in the Goal shall be truely convicted or acquitted and discharged and the goal fully delivered unless the Court shall see cause to the contrary in which case it shall be lawful for them to remand any Prisoner or Prisoners and put off His, Her and their Trial to the next Court."

There was in each such Court to be one Judge but also "one other Person by the Name of Assistant or Assessor to the Judge & Court of the Township and District of which Assessor shall be present at every Court to sit with the Judge, & assist him with his Advice & Opinion in all Civil Matters as well of Law as Practise, but shall have no Authority or power to attest or issue any Process, or have any Voice, or give any Vote concerning any Order, Judgement, or Decree, or otherwise intermeddle with any of the Business of the said Court, than by giving such Advice & Opinion as aforesaid".[14]

Nor should the Colonial Government at Quebec be too much criticized. Not only was money scarce but for all the period after 1774 until 1782 there was constant turmoil in the whole western country and no permanent arrangement could fairly be made—it was not till after the Peace and the Treaty of 1783, that anything like settled life began: and even after that time, the ownership of much of the West was doubtful until after Jay's Treaty.

By the combined operation of the Ordinance of February 25, 1777, 27 George III, c. 1,[15] and the Quebec Act, Michigan became part of the District of Montreal: and so far as the Courts were concerned had to look to the

Court at Montreal—none being *legally* provided at Detroit or Michillimackinac. This was a very great inconvenience and became greater as commerce increased. Many expedients were tried but none proved wholly satisfactory.

For a time, Justices of the Peace, however, irregularly tried civil cases of small importance—this being discovered to be illegal, the merchants at Detroit entered into a General Arbitration Bond to submit their disputes to arbitration. The signatories sat on the Board of Arbitrators in rotation, but sometimes there were those who refused to abide by the award, and there was no way to enforce an award except by an action in the Court of Common Pleas at Montreal.[16]

Practically all the litigation was between the merchants at Detroit of whom only one was French—the country people settling their disputes amongst themselves—as was said by one who knew them well "the rest of the inhabitants . . . . . being for the most part planters who considered themselves very little concerned in Courts of Law . . . . . there have been few instances from the Conquest to the present time (1788) of any law whatever having been administered there". The settlement of Detroit including the inhabitants who occupied farms running some twelve miles above the Fort and four below it, and on rivers and creeks near by, taking in also the River Raisin where there were some forty French Canadian families settled, was considered by 1787 to have about 4000. Michillimackinac had few settled inhabitants but was "rather like a Mart

or Fair where the business of the year is transacted in about two months."[17]

Some of the country west of the Ottawa and east of the Detroit, too, was becoming settled, chiefly by those who had remained faithful in the American Colonies to the British Crown, the United Empire Loyalists, the "Tories" so-called; many of them had treasured hopes of the ultimate success of the Royal cause, but when by the Treaty of Paris, 1783, the Independence of the United States was recognised they joined their brethren in the northern part of the Continent still under the British flag. The chief nuclei of these were about the present Cornwall, Kingston, and Niagara-on-the-Lake. These for some time had their disputes settled by their own military officers: but more than once they urged that Courts should be provided for them.

In 1785, part of the "Upper Country" obtained at least partial relief by an Ordinance passed at Quebec, April 30, 1785; this enacted that from Point au Baudet (the eastern point of the future Provinces of Upper Canada and Ontario) west to the Head of the Bay of Quintiz (Quinté), any Justice of the Peace could try cases for the recovery of a debt respecting personal property exceeding two shillings and sixpence (about fifty cents) and up to forty shillings (about $8.00); any two Justices of the Peace, cases of the same kind above forty shillings up to five pounds (about $20)—no appeal being allowed.[18]

No such provision however was made for the Niagara or Detroit country; and Montreal had for them the nearest Civil Courts. The extreme distance coupled

with the long winter rendered these Courts almost useless and "the suitor was generally more oppressed than benefitted". The Merchants of Montreal in 1786 took the matter up with a committee of the Executive Council—they pointed out the inconveniences in graphic terms as follows:—

> For instance the merchant of Detroit sends to Montreal for a summons against some one of his debtors at that Post, his Letter takes a month frequently coming down, the summons Issues and three months is the shortest space allowed for its return, and often according to the season, four, five and six months, is granted. The summons goes up, and by a special warrant from the Sheriff, some Ignorant Person is appointed to serve it, he commits an error; so that when the writ is returned the Service is found defective, and the only Remedy then left to the Plaintiff is to begin again, this happens at least three times out of five, but if per chance the Summons is returned properly served, and that Judgment goes by Default, it then requires six months before the Property of the Debtor can be seized upon at Detroit, by virtue of an execution issuing on a Judgment so obtained, and even when execution goes up, it is of no avail, unless the Commanding Officer of the Post interferes by affording Military Aid to enforce it. There is not less than forty suits a year (all above Ten Pounds Sterling) instituted here in this Court in the foregoing manner, by Persons residing at Detroit against others in the same place, out of which not above one-fourth have the desired effect, besides the great expense for costs of suit of so much importance.[19]

They urged the creation of a separate District composed of the Posts of Detroit and Michillimackinac, the appointment of a Judge to reside at Detroit, and go for a time (May 1 to July 25 being suggested) each year to Michillimackinac. As to the matter of expense they said that "the Quit-rents and other Revenues arising to

the Crown at Detroit only and heretofore taken and claimed as the Perquisites of the Lieut. Governor or Commanding Officer would nearly, if not fully, defray the expense of the Judicial Establishment demanded". Such a suggestion that public money should go for public purposes and not to line the pockets of the Officers of the Crown was revolutionary and could receive little consideration at the hands of rulers who were not responsible to the people: and, in fact, the practice of the officers taking and keeping Crown dues continued.

The very considerable amount of business in the Upper Country[20] and the insistent demand for Courts at length resulted in the separation of the Upper Country from the Districts by Dorchester's Patent of July 24, 1788. This made Michigan part of a new District, the District of Hesse.

The formation of a new District necessarily involved separate Courts and the Third Period came to an end.

Criminal Law

Some notice must be taken of the administration of the Criminal Law during this Period.

The Court of King's Bench was constituted by Ordinance of March 4, 1777,[21] a Supreme Court of Criminal Justice and Jurisdiction for the trial of all kinds of offences by the Chief Justice of the Province: it sat at Quebec and Montreal and proceeded according to the laws of England.

Any Justice of the Peace could commit for trial at the Sittings of this Court to be held in his District: and

consequently the regular course in case of crime in Detroit, &c., was to commit for trial at Montreal and to send the accused under guard to that city. Inconvenience arose from the great distance preventing the arrival in Montreal of the accused or of the necessary witnesses before the Court rose, and in 1787, February 27, an Ordinance was passed enacting that "if it should so happen that offenders brought up from very remote distances of the Western Country in the District of Montreal, or the witnesses may not arrive in time for the trials, while the Court is sitting at Montreal then the bodies of the prisoners and their causes may be carried to Quebec, and be there proceeded in, to trial, judgment and execution, as fully to all intents and purposes as the same might have been had in the said District of Montreal, and by a jury of the same, and the witnesses be as compellable to attend at Quebec as they were before to appear at Montreal, and new recognizances may be taken for that purpose accordingly."[22]

In addition to the Court of King's Bench, there was in each District a Court of General Quarter Sessions of the Peace composed of the Justices of the Peace for the District (all of whom were named by the Governor), and at least two were required to make a quorum—this Court sat four times a year at the chief place in the District and had jurisdiction to try with a jury, such matters as were within the jurisdiction of the General Quarter Sessions in England. In earlier days these included all manner of crimes, and hundreds of thieves were in Tudor and Stewart times executed on the sentence of these Courts: but by the time now under con-

sideration they had ceased to try the more serious crimes involving the punishment of death.[23] Such were the regular Criminal Courts for the trial of those charged with crime.

But for a time the tradition of military rule persisted after the Quebec Act of 1774 had, at least in theory, introduced civil government into the Province of Quebec and thereby removed it from the authority except in purely military matters of the Commanding Officer of the Forces.

The most striking instance of this may be related somewhat at length. Colonel Henry Hamilton was appointed Lieutenant Governor of Detroit and its Dependencies in 1775 by Dorchester: he had no great claim to wisdom or prudence, not to speak of his stock of information.

Philippe Dejean already mentioned who certainly had a Commission as Justice of the Peace, apparently with the sanction of Hamilton, proceeded to extend his jurisdiction.[24] Before him came certain persons charged with felony—instead of simply sending them to Montreal for trial there, as he should, he impaneled juries and actually tried them. We are informed that:

> A contemporary record shows what was in fact three trials before a jury at one time, and disposed of at one verdict. A Frenchman was found guilty of stealing some furs from Messrs Abbott & Finchley; and Ann Wyley a former slave of stealing a purse containing six guineas, from the same firm; but the jury found the proof on this point not sufficient though as they said, 'the circumstances were very much against them'. Philip Dejean the justice, sentenced them to be hanged upon the King's domain or public common, and they were hanged accordingly.[25]

These wholly unwarranted proceedings did not pass unnoticed. September 7, 1778, the Grand Jury, in the Court of King's Bench at Montreal, presented Dejean for having at Detroit in the years 1775, 1776, and 1777 "acted & transacted divers unjust & illegal, Terranical & felonious acts & things contrary to good Government and the safety of His Majesty's Liege subjects".

In the same Presentment it was presented that Hamilton "not only remained at Detroit . . . . and been witness to the several illegal acts and doings of him, the said Philip Dejean, but had tolerated suffered and Permitted the same under his Government, guidance & direction".[26]

Properly and regularly, a Bill of Indictment should forthwith have been prepared against Hamilton and Dejean and laid before the Grand Jury: but the matter was too important for hasty action, a public scandal threatened and it was decided to lay the matter before Lord George Germain, the Secretary of State in charge of the North American Colonies: accordingly, Sir Frederick Haldimand, the Governor, sent the Presentment to London for instructions.[27] A copy of the Presentment was sent to Hamilton, but he in February started off from Detroit with a small force to capture Vincennes and was himself taken prisoner, February 25, by Major Clark—so we have no statement by him. Dejean at his own urgent request was allowed to accompany Hamilton and he was also captured. Both were sent to Virginia, imprisoned and ironed—and so pass from the story.[28]

Germain thought that the Grand Jury expressed "a

greater degree of Jealousy than the Transaction complained of in the then Circumstances of the Province appeared to warrant", and instructed Haldimand to direct the Chief Justice (then Peter Livius) to examine the evidence, and if the punishment was warranted by the facts, the Attorney General was to enter a *nolle prosequi.*[29] This was accordingly done and the matter was hushed up. No further irregularities are recorded.[30]

CHAPTER IV

Fourth Period of British Rule: 1788-1792

THERE is no Ordinance authorizing the erection of Courts or erecting them in the new Districts formed by Dorchester in 1788: but the formation of the Districts was apparently considered, *ipso facto,* to authorize such erection.

We shall now disregard the other new Districts and deal with the District of Hesse which *de facto* included Michigan.

A Court of Common Pleas was not formally created by Ordinance or otherwise: what was done was to appoint three gentlemen of Detroit, (Jacques) Duperon Baby, Alexander McKee, and William Robertson, First, Second and Third Justice, respectively "of Our Court of Common Pleas in and for our District of Hesse".[1] None of these was a lawyer and there was no provision for a salary: instead thereof, the evil system of paying the Judges by Fees was provided for by an Ordinance of July 24, 1788.[2]

Although the same provisions were made for Hesse as for the other new Districts, that is, three Justices, all laymen and all paid by fees, when the arrangement became known in Detroit, the traders, merchants and inhabitants including the Justices themselves were at once up in arms. No possible fault could be found with the character or standing of the Judges: Jacques Duperon Baby was the only French Canadian trader in

Detroit, a man of good family, well-bred, and held in high esteem for probity and worth. Alexander McKee was an old and tried servant of the Crown, who had shown his loyalty by his sufferings and self sacrifice, and William Robertson was a Scotsman who had advanced himself to modest wealth by strict integrity, coupled with indefatigable industry. No three men of higher standing could have been selected: the practice followed in the old Districts of giving the New Subjects representation on the Bench was followed in this District also, and the French Canadians could rest assured of receiving proper consideration by the Court so constituted.

But practically all the litigation was in connection with trade, the litigants were traders and the questions to be decided affected trade and traders. Baby was in a large way of trade, particularly the important fur-trade: he was, as has been said, the only French Canadian in business of any importance and his business connections were many and important. McKee was of the official class, having a place in the Indian Department and consequently was not so closely related to trade: but Robertson had even a larger business and wider connection than Baby. It was felt that most questions affecting trade and the discussion respecting property connected with it would in nine cases out of ten affect one or both of them immediately or circuitously: in a small and confined field the influence of probable interest was more to be feared because more intensive than in a large and more populous one—it might even be feared that under the idea of conciliating the goodwill of the

Judges the trade of the District might gradually turn to and at last almost wholly centre in the merchants on the Bench.

Again, the probable litigants were men of business and intelligence—and notwithstanding the silly but popular idea of the uncertainty of law, the more intelligent a community is the more does it desire that its disputes shall be settled on some fixed and discoverable principle —on some law. The oriental conception of the Judge deciding on his own view of what is right—the conception graphically indicated in our phrase "the length of the Chancellor's foot"—is unsuited to any but a primitive and undeveloped people—business will have nothing of it. This implies a trained lawyer as Judge and the Detroit community from the first had desired a trained lawyer not laymen.

The appointments to the Bench were thoroughly canvassed and as thoroughly condemned by all, including the Justices themselves.

An exceedingly able and convincing, if somewhat labored and sententious, "Memorial[3] and Representation of the Merchants, Traders and Inhabitants of Detroit" to Lord Dorchester the Governor General was drawn up and signed by thirty-four of the most prominent citizens. It set out the hardships and expense of the former system of resorting to Courts distant many hundreds of miles, the trouble, expense, and delay being nearly equivalent to a denial of justice. The Memorialists gratefully recognized the value of the laws governing them but pointed out that however equitable and wholesome laws may be, "they will prove essentially defi-

cient if there are not men of Professional abilities and integrity to dispense them". Urging that "Jurisprudence is a science, perhaps . . . . . the most intricate . . . . particularly . . . . . under the complicated state of the Laws of this Province and it can be (by) only a regular course of study and application joined to abilities that a competent knowledge of it can be acquired. It is also indispensably necessary to the due administration of Justice that no Judge have an apparent or probable interest in the event of his decisions . . . . . ." After expressing their esteem, as private citizens, of the Judges appointed and admitting "them to be as eligible as any to be found in the District", they pressed the objection already mentioned of their occupation and probable interest, they go on to say "The Professions of Judge and Merchant combined in the same person are wholly incompatible. To do justice to either particular, the first would require his whole time and attention . . . . . ." The next objection was the want of professional abilities in the whole Bench—it could not be considered a reflection on their ability to say that "they must be deficient in that Knowledge of Law necessary so to important a station".

They urged "the appointment of at least one person of professional abilities and character with a salary depending neither on perquisites nor the voluntary contribution of individuals"—they had not a very high opinion of the Justices of the Peace some of whom they said were entirely illiterate,[4] "which must diminish the respect due to the Laws and consequently prevent the

beneficial effects resulting from a well informed Magistracy."

If from the position of Britain this should be considered too great a burden upon her financial resources they pointed out that what was asked for was for her safety as well as theirs, and the outlay would be eventually repaid to her abundantly by the trade when protected by a proper Court.

If they could not get a professional Judge, they suggested a Court of Arbitration composed of Justices of the Peace sitting in rotation with power to compel the attendance of witnesses and to carry their judgment into execution.[5]

Two of the Judges, McKee and Robertson, signed this memorial, Baby did not think it proper to do so as he was appointed a Judge—but it is known that he wholly approved of it, and, indeed, he formally resigned —Robertson, moreover, went to Quebec to support it in person.

On the Memorial being presented to Lord Dorchester, he appointed a Committee of the Executive Council to consider the Memorial and confer with Robertson, and learn from him and other means the local peculiarities of the District of Hesse, and to report a statement thereof with the requirements for the promotion of its prosperity.[6]

The Committee sat, examined Robertson fully and carefully in the light of the Memorial and of a very able and valuable letter sent by Robertson to Chief Smith in which the situation was fully discussed.[7]

Their Report recommended "to fill up the vacancies

occasioned by the resignation of Messieurs Robertson and Baby"—McKee apparently had not sent in a formal resignation—and suggested that "to induce Gentlemen of Law Abilities and possessing knowledge in the custom of Merchants to undertake an employment to which all their time with much studious application must be given", the Governor "should annex salaries or such certain and permanent provision for their support as the dignity and importance of these stations require". It said "The Judges of Hesse may probably have a yearly journey upwards of three hundred miles to make from Detroit to Michilimakinac there to remain two months during the time of their great annual Mart"—that being "the Emporium where equipments are made and from whence canoes are yearly dispatched by the traders to very remote regions extending to the Westward and Northward on commercial speculations".

No recommendation was made as to the number of Judges: it is not unlikely, however, that the representation of the Montreal merchants made more than two years before that one judge would be sufficient for such Court as was required, had its effect, as almost certainly did their views as to the Judge going to Michilimackinac for two months in the year.[8] It is probable that considerations of economy had the greatest effect. However that may be, the Governor determined to appoint one judge only but him a competent lawyer with a reasonably liberal salary.

William Dummer Powell, a native of Boston, educated at but not yet called to the English Bar, who had shown his reliability in several Commissions and had

probably the largest practice in the Province, was selected by Dorchester for the position. No better choice could have been made: Powell was well grounded in both the Common Law and the French Canadian Law; moreover, he had a thorough command of French, colloquial as well as literary—and he abundantly fulfilled the expectations formed on his appointment.

In view of a single appointment to be made to the Bench, an Ordinance was passed, April 30, 1789, wherein it was provided that "until the Bench of the Court of Common Pleas for the District of Hesse shall have three Judges duly appointed to officiate therein, all the Powers and Authorities of the whole number shall be vested in such Person as shall have a Commission to be the First Judge thereof, any other Law Act or Ordinance to the contrary notwithstanding.".[9]

Powell reached Detroit, June 9, and opened the Court of Common Pleas at L'Assumption (now Sandwich) Thursday, July 16, 1789—from that day until its last sittings, March 31, 1794, Powell presided in this Court alone: as he was the "First Justice" of the Court of Common Pleas for the District of Hesse, so he was the last and the only one.

The Court was finally abolished by the first of the many Judicature Acts of the Province of Upper Canada, the "Act to establish a Supreme Court of Civil and Criminal Jurisdiction and to regulate the Court of Appeal," assented to July 7, 1794, the jurisdiction of the Court of Common Pleas having been cut into to some extent in 1792 by the "Act for the more Easy and Speedy Recovery of Small Debts" assented to, October 15, 1792.[10]

In addition to this Court of Common Pleas Powell presided over another Civil Court, the Prerogative Court, which will be described in a later chapter.

Before going into the story of these two Civil Courts, it will be well to glance at the Criminal Law and Courts.

Criminal Law and Courts

While in Civil matters, the Canadian Law generally applied being modified in certain respects by Ordinances, in Criminal matters the Law of England was in force.

One exceedingly important modification of the Criminal Law was made by the Ordinance of April 30, 1789, previously mentioned. By the Law of England, the theft of goods above the value of 12 pence was Grand Larceny: if of the value of 12 pence or under Petit Larceny—from very early times one found guilty of Grand Larceny was to be hanged, of Petit Larceny only, to be whipped (or later, to be transported).[11]

The Ordinance changed this, making Petit Larceny extend up to twenty shillings sterling (about $5), and provided for the trial of anyone charged with Petit Larceny. He might be committed by any Justice of the Peace for trial at the next Quarter Sessions: and if within 48 hours of his commitment, he did not give sufficient Bail for his appearance for trial, he might be tried by three Justices of the Peace without a Jury; if convicted, he could be corporally punished as the Justices or the majority of them should think proper (not extending to life or limb) and then discharged. But if he had not been a stated resident in the District for

twelve months before his commitment and should be found in the District twenty days after his discharge any one Justice could commit him to prison, and the three Justices further punish him (not extending to life or limb) until he should find sureties to keep the peace for seven years.

The jurisdiction of single Justices of the Peace to commit for trial as the Quarter Sessions continued: and likewise the jurisdiction of the Quarter Sessions and the Court of King's Bench.

A Commission as Justice of the Peace for the new District of Hesse was issued to eight persons (1) Alexander Grant, Commander of the Fleet on the Lake, (2) Guillaume La Motte (3) St. Martin Adhemar (generally the names were reversed) (4) William Macomb afterwards member for Kent in the Parliament of Upper Canada (5) Joncaire de Chabert, (6) Alexander Maisonville (7) William Caldwell and (8) Mathew Elliott—La Motte, Adhemar, Maisonville, Caldwell and Elliott having previously been on the Commission of the Peace, Grant, Macomb and de Chabert being now appointed for the first time. A Sheriff, Gregor McGregor, a Coroner, George Meldrum, and a Clerk of the Court of Common Pleas, Clerk of the Peace and of the Sessions of the Peace, Thomas Smith, were also appointed—so that the Judicial Staff was complete.[12]

In addition to these Justices of the Peace, the Justice of the Court of Common Pleas had jurisdiction to commit for trial.

Cases of serious Felony were tried at a Court of Oyer and Terminer and General Gaol Delivery held like the

Court of Common Pleas and General Quarter Sessions at L'Assomption. Powell was always commissioned as Judge of this Court.

I find no record of anyone being sent during this period to Montreal or Quebec for trial before the Court of King's Bench presided over by the Chief Justice of the Province: but no doubt the power existed.

We have now the Courts as they were in this Period —William Dummer Powell was sole Judge in both the Civil Courts, the Court of Common Pleas and the Prerogative Court—he was also Presiding and (in effect) sole Judge in the higher Criminal Court that of Oyer and Terminer and General Gaol Delivery—the only Court in which he was not supreme was the Court of General Quarter Sessions of the Peace held four times yearly by the Justices of the Peace of the District.[13]

CHAPTER V

Fourth Period of British Rule: 1788-1792

The Court of Common Pleas

WE fortunately are in possession of the records of this Court during the whole term of its existence with the exception of the period from September 24, 1789, to May 19, 1791.[1]

These records and others have been printed by the Bureau of Archives for the Province of Ontario in the Report for 1917, a volume easily available. But there are a few errors in the publication and it will be of interest and advantage to print the records here in full with notes on such cases as seem of particular interest, either in their subject matter or their illustration of law and practice.

Advocates, Clerks, and Sheriff

First it is to be observed that there was only one Advocate or Attorney regularly admitted to practise as such, Walter Roe, who appears in a very great many cases.[2]

As in the early English Courts, a litigant could appoint an attorney by Special Procuration or Power of Attorney to represent him in an action. In this Court, I find that Charles Smyth (later Clerk of the Court) Joseph St. Bernard, Patrick McNiff, John

Askin, Hon. Jacques Duperon Baby and others thus specially appointed, acted occasionally as Attorneys.[3] But in the vast majority of cases, the litigants appeared in person.

The Clerk of the Court was Thomas Smith for three years, then Charles Smyth from July 4, 1792, till he was killed in the campaign in1794 against Anthony Wayne, he having joined the Indians in an expedition. William Monforton acted for him during his illness from August, 1792, till the end of the year. Three Bailiffs were sworn in September 3, 1789—John Smith, Pierre Sera *dit* Lavictoire and Joseph Elam. Gregor McGregor was Sheriff.

The Practice

The Practice of the Court was prescribed by the Ordinance of April 21, 1785.[4] Cases were divided into 1. Actions not exceeding £10 sterling (about $50), 2. Actions exceeding £10 sterling.

Actions of £10 or under

The plaintiff prepared a simple Declaration (generally on a printed form obtained from the Clerk). This was filed with the Clerk: the Clerk made a copy of it, and at the bottom wrote out a Summons to appear at a date named before the Judge, the Summons to be in the language (English or French) of the defendant: The Judge signed the Summons and a copy of Summons and Declaration was served on the defendant or left at his dwelling place or ordinary place of residence with a grown person there.

On the Return day if the defendant did not appear, the service of Summons and Declaration being proved, the cause was heard and judgment given and costs "agreeable to equity and good conscience." If the defendant did appear in person or by agent, but the plaintiff either did not appear at all, or appearing did not prosecute or prosecuting failed to prove his case, the action was dismissed with costs. If the plaintiff prosecuted and proved his case he had judgment with costs —execution not to issue for eight days. The debt might be ordered to be paid in instalments limited to three months after judgment—execution only against moveables (excluding beasts of the plough, &c).

Actions Above £10 Sterling

The plaintiff drew up a Declaration and presented it to the Judge: he signed an Order to the Clerk to issue a Writ of Summons, to be executed by the Sheriff commanding the defendant to appear in Court on a day appointed by the Judge in the Order for the Writ of Summons "regard being had to the seasons of the year as well as to the distance of the defendant's abode or place of service from the place where the Court" should sit.

A copy of the Writ of Summons and Declaration was served by the Sheriff upon the defendant personally or by leaving it at his house with a grown person there belonging to the family.[5]

No change could be made in the Declaration without Rule of Court and payment of Costs. If neither party

appeared the action was dismissed. If the plaintiff appeared and the defendant did not appear on the return day, the case was not tried forthwith but a "Default" could be obtained against defendant. If he failed to appear at the next weekly Sittings of the Court without good reason, the Court heard the plaintiff's case and if it was proved final judgment was entered and execution issued. If he appeared on the second Weekly Court after "Default" he paid the costs and then was allowed to answer verbally or in writing—if verbal the Clerk took the answer down in writing.

A Plea might be delivered in writing and whether it was *ore tenus* or in writing the plaintiff might put in a Replication *ore tenus* or in writing.

A day was fixed for trial and evidence heard.

In England at this time every personal action (speaking generally and *exceptis excipiendis*) was in theory begun by a seizure of the person of the defendant to ensure his appearing in Court to answer the plaintiff's claim. When so taken the defendant remained in custody unless and until he gave bail for his appearance. By this time, however, in England many actions were begun by a process which affected to direct the capture of the defendant but did not in practice do so: the Sheriff served the Writ and pretended that the defendant had put in Bail by John Doe and Richard Roe or the like fictitious persons. This was called Common Bail.

If it was intended actually to arrest the defendant, it was so stated and then the defendant was arrested and held until he gave Special Bail. Such Writ was called

a Capias ad Respondendum or generally in the contracted form, Ca. re.

In the first Ordinance of September 17, 1764, it was provided for the first process of the Court of Common Pleas to be by Capias ad Respondendum. The French Canadians were dismayed at this practice; they protested and petitioned: "We have seen with grief our fellow-citizens imprisoned without being heard, and this at considerable expense ruinous alike to the debtor and creditor."[6] The Attorney General of the Province, Francis Maseres, at the instance of the Governor, Sir Guy Carlton, drew up and presented a Report,[7] on September 2nd, 1769, in which he said, *inter alia,* "Arrests of the body for debt are used in the first instance both upon suits in the Court of King's Bench and suits in the Court of Common Pleas, and even upon suits instituted before Justices of the Peace. This is a part of the English law that a good deal surprised and alarmed the Canadians upon its first introduction, as it carried an appearance of much greater severity than was practiced under their own laws, which allowed of imprisonment only in criminal proceedings and in some few civil suits grounded on bills of exchange or other instruments of a commercial nature, and then only in the beginning of the suit; but now (1769) they are grown accustomed to this way of proceeding, and frequently put it in practice against each other". He recommended its abolition but he did not recommend the abolition of imprisonment on "final process", i. e., after judgment, as "many persons of good sense and character of both nations are of the opinion that, considering the great

credit that has been given by persons in trade in this province and the knavish and trickish disposition that has appeared in many of those to whom it has been given, there is no other method of proceeding by which creditors can hope to obtain payment of their debts". As to arrest before judgment, he said: "Other persons are of a different opinion and think arrests of the body on the first instance an unnecessary piece of harshness in civil suits and wish it were restrained; and in this opinion we humbly submit it to your Majesty that we are ourselves inclined."

Accordingly a writ of Summons was substituted for the Ca. re., when the law came to be amended, February 1, 1770;[8] in the new Ordinance it was provided, that in cases not exceeding £12 no process was to issue after declaration filed, and while there is no express provision for a *capias ad respondendum* it was not abolished. This alleviated but did not destroy the grievance. We find the Home Solicitor-General Wedderburn, in a Report, December 6, 1772, saying: "The Canadians, it is said complain, and not without reason, of the arrest and imprisonment in civil cases . . . . . the arrest upon mesne process which is only used to compel appearance or answer may be abolished, and in lieu of it the plaintiff might be allowed after due summons to enter an appearance for the defendant."[9] The Advocate General, Marriott, in his Report, 1774, "As it appears that the Canadians have had so great an objection to arrests being dishonourable, and as arrests cause so much misery in a whole family who become a burthen upon the public, as they prevent every exertion of industry and render

the morals of the prisoner much worse by confining him in company with the most abandoned criminals, it seems to me that in a commercial state it may be proper to take away arrests of the body in the first instance in civil cases under £10 unless there is an oath of two sufficient witnesses that the defendant is likely to withdraw himself out of the colony. To arrest an industrious man when personal labour is of so much value to the community is a public loss as well as a private one to the person who arrests; it is putting fetters upon that industry the exertion of which only could discharge the debt."[10] He does not, however, advise the abolition of the arrest if the debt be £10 or over.

When the Quebec Act of 1774, which (as has been stated more than once) brought Michigan into Quebec, the Courts were reorganized, there was no Ca. re. in the usual and ordinary case.

But Article 1 of the Ordinance of February 25, 1777, provided in cases of over £10 Sterling for a Ca. re. in some cases—that is if the Judges or any two of them were satisfied by the affidavit of the plaintiff or otherwise that the defendant was indebted to him, and on the point of leaving the Province whereby the Plaintiff might be deprived of his remedy against him, the Judges or any two of them might grant an attachment against the body of such defendant and for want of Bail commit him to prison until the determination of the action.[11] Consequently according to the law when Michigan got the Court, except where the debt was over £10 sterling no person could be thus arrested at all; and unless a

debtor was about to leave the province he could not be arrested at all before judgment.

I do not find that this course of arrest before judgment was ever taken in the Court of the District of Hesse and I do not further pursue this matter.

In addition to the Capias ad Respondendum there was a writ of Capias ad Satisfaciendum: after judgment, if the debtor did not pay, he could be attached and imprisoned till he paid the debt. This was not wholly obsolete in 1785—there were two cases in which the Writ might still be issued—and it will be well to quote the exact words of the Ordinance:

Art 37. In matters as well above as of or under the Value of Ten Pounds Sterling, if the Defendant shall convey away or secrete his Effects, or shall with Violence, or by shutting up his House, Store, or Shop, oppose his Effects being seized, in all such Cases, on due Proof thereof, an Execution shall go against his Person, to be taken and detained in Prison until he satisfies the Judgment, any Law, Usage or Custom to the contrary notwithstanding.

Art 38 For the Satisfaction of all Judgments given in Commercial Matters between Merchants or Traders, as well as of all Debts due to Merchants or Traders, for Goods, Wares, and Merchandizes by them sold, Execution shall issue not only against the Goods, Chattels, Lands, and Tenements of the Defendant but also against his Person, to be taken and conveyed into the Prison of the District, and there detained until he pays the Amount of the Judgment, or otherwise settles with and satisfies the Plaintiff, any Law, Usage or Custom to the Contrary notwithstanding. Provided that if the Defendant after remaining One Month in Prison shall make application to the Court, and make an affidavit that he is not worth Ten Pounds the Plaintiff shall pay to the Defendant the sum of Three Shillings and Six Pence weekly for his Maintenance, as long as he shall be detained in Prison

at the suit of the Plaintiff; and in Time of Scarcity the said Court of Common Pleas may in its discretion augment the said Allowance, not exceeding the further Sum of One Shilling and Six Pence per Week; such Payment shall be made in advance on Monday in every Week; in failure of which the Court from whence the Execution issued shall order the Defendant to be released; but the Plaintiff shall not be obliged to make such Payment, if he can prove to the Satisfaction of the Court, by which the Defendant stands committed that the Defendant has secreted or conveyed away his Effects to defraud his Creditors.

Trial

The normal method of trial in English jurisprudence was by a Jury of twelve men, in French jurisprudence by a Judge or Bench of Judges—the Ordinance of 1785 made a compromise.

Article 9 gave to either party who should desire it the right to have the case tried by a jury in all cases of personal wrongs (what in English Law are called Torts) and also in all cases "grounded on Debts, Promises, Contracts, and Agreements of a Mercantile nature only between Merchant and Merchant and Trader and Trader so reputed and understood according to Law".

But a radical modification was made from the English traditional rule which required the Jury to be unanimous by enacting that the agreement of nine jurymen should be sufficient and as effectual as that of the whole twelve.[12]

As however, there was no Jury trial in the Court of Common Pleas having jurisdiction in Michigan in this Period, I leave the matter here,[13] simply saying that it showed perfect confidence by the litigants in the capac-

ity, honesty and impartiality of the Judge that no Jury was called for by any litigant in any case.

Appeals

A Court of Appeals was created by Royal Commission of August 1, 1776,[14] composed of the Governor, the Lieutenant Governor, the Chief Justice and the members of the Executive Council, but as there is no instance of an appeal in a Michigan case I do not further pursue this subject.

CHAPTER VI

Fourth Period of British Rule: 1788-1792

Records of the Court of Common Pleas

THE official records of this Court during this, the Fourth Period of British Rule, are full of interest to the people and especially to the lawyer.[1] They here follow as found in the original record, except that contractions have been in some cases extended, etc., for the sake of clearness: and in a few cases the capitalization and orthography have been modernized, pains being taken in every instance, not to change the sense or even the words.

Province of Quebec,
District of Hesse,
16 July, 1789.

Court of Common Pleas held at L'Assomption in the said District on Thursday, the Sixteenth day of July, One Thousand Seven Hundred and Eighty-Nine.

Present: The Honorable William Dummer Powell, Esquire, First Judge of the said Court, etc.

John Robert McDougall, of Detroit, Gentleman,
vs.
Isaac Germain, Sergeant in the Sixty-fifth Regiment.

The plaintiff by his Attorney Walter Roe, filed his declaration, and the defendant being called thrice and not appearing: It is ordered that a Default be entered against him.[2]

Hugh Heward
vs.
Antoine Lasselle

The plaintiff by his Attorney Walter Roe filed his declaration. The defendant being

called, and appeared in person; and by consent of the parties: It is ordered that the defendant do plead to this cause on the first Court day in October next.[3]

James Heward, of Detroit, Labourer
vs.
Hugh Heward, of the same place, Gentleman, and agent to John Askin, Esq., and Others Trading under the Firm of the Miamis Company.

The plaintiff by his attorney Walter Roe filed his Declaration. The defendant appeared and confessed the debt, that it was justly due to the plaintiff for his wages when employed both himself and his horse in the service of the Miamis Company at Sandusky, during the time the defendant was acting as agent for the said company, and that the defendant was the person that engaged the plaintiff with his horse, finding that the service of the company could not be carried on without him. The Court ordered judgment be recorded against the said Hugh Heward after the matter being duly considered that he the said Hugh Heward pay to the said James Heward for his wages the sum of fourteen pounds, one shilling and threepence and the sum of £..... costs as by him sustained with interest on the principal sum from the eleventh day of July last until perfect payment; reserving to the defendant his recourse for repayment from his employers.

Richard Dobie, of Montreal, Merchant,
vs.
John Martin, of Detroit, Merchant.

The plaintiff by Mr. Roe his attorney, filed his Declaration and the defendant being called thrice and not appearing, it is therefore ordered that a Default be entered against him.

Court adjourned to the 23rd of July, 1789.

T. Smith,
Clerk.

Province of Quebec, District of Hesse, ss.

COURT OF COMMON PLEAS. Thursday, the twenty-third day of July, one thousand seven hundred and eighty-nine.

Present: The Honourable William Dummer Powell, Esquire, first judge of said Court, etc.

Leith & Shepherd vs. J. Bts. Laduc, fils.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant after being called appeared in person and acknowledged his signature to a note of hand now filed in Court, but pleads minority at the time of subscribing the same and that it was not a debt of his contracting, whereupon the Court ordered the defendant to prove his allegations on the twentieth of next August.[4]

Thomas Cox of Detroit (No. 2), vs. Guillaume Gyeaux, of the Parish of L'assomption, Yeoman.

Walter Roe, attorney for the plaintiff, filed his declaration. The defendant appeared in person and confessed judgment for the principal sum, but denied having ever agreed to pay interest to the plaintiff. Whereupon the Court ordered judgment to be recorded against the defendant to pay unto the plaintiff the principal sum of one hundred and sixteen pounds, eleven shillings and eightpence, currency of the province and interest to be thereon computed from the twentieth day of July last until perfect payment with the sum of ..... for costs accrued in the premises.

Execution issued 24 August, 1789, and returnable 7 January, 1790.

Principal sum £116 11 8
Costs 5

The plaintiff appeared and filed his declaration and the defendant being called and entered appearance.

Thomas Smith
vs.
Jean Bte. Crete.

Mr. Roe for the plaintiff filed his Declaration and the defendant appeared in person and declares that he owes nothing to the plaintiff and that the goods as specified in the account annexed to the plaintiff's declaration he received in the quality of a clerk. The Court order the plaintiff to prove their allegations on the twentieth of next August.[6]

McKillip & Jacob
vs.
Claude Salaut, of Detroit, Yeoman.

Walter Roe for the plaintiff filed his Declaration and the defendant appeared in person and acknowledged the principal sum; but objected against the interest, saying that he never agreed to pay it. The Court order the plaintiffs to prove their demand on the twentieth of next August.[7]

Meldrum & Park
vs.
Pierre Labute, of the Parish of L'assomption, Yeoman.

Walter Roe for the plaintiffs filed his declaration. The defendant appeared in person and acknowledged the plaintiffs account to be just; but that he had an account of work done for the plaintiffs to the amount of one hundred and eighty livres ancient currency of Quebec which he moved to be deducted. The Court order judgment to be recorded against the defendant for the balance (after deducting the said one hundred and eighty livres) of thirty-nine pounds, six-

Meldrum & Park,
vs.
Dominique La Brosse, of the Parish of St. Anne, Yeoman.

teen shillings and twopence currency with interest to be thereon computed from the twentieth of July last untill actual payment with the sum of six pounds, ten shillings and sixpence like currency for costs of Suit.

Execution issued 12 August, 1789. Returnable 7 of January, 1790.

Principal sum	£39	16	2
Costs	6	10	6
	£46	6	8 [8]

Meldrum & Park vs. Joseph Barron, of the Parish of St. Anne, Yeoman.

Walter Roe for the plaintiff filed his Declaration, and the defendant appeared in person and denies he had any account to render to the plaintiffs respecting a certain quantity of Indian Corn as set forth in the plaintiff's Declaration. The Court orders the plaintiffs to prove their demand on the twentieth of next August.

William Groesbeck, of Detroit, Merchant, vs. Joseph Gamelin, of the Parish of L'assomption.

Mr. Charles Smyth acting by procuration for the plaintiff filed his Declaration. Walter Roe, the defendant's attorney entered appearance.[9]

William Robertson, of Detroit, Merchant, vs. Antoine Dequindre, of the Parish of St. Anne.

Mr. Charles Smyth acting by procuration for the plaintiff filed his declaration. The defendant appeared in person and acknowledged the note as set forth in the declaration, but pleads to have deducted a payment made thereon of two pounds, three shillings and fourpence currency. Thereupon the Court

ordered judgment to be recorded against the defendant for the balance of fourteen pounds six shillings and tenpence half penny currency with interest to be thereon computed from the twenty-second day of July last, until ample payment and the sum of six pounds one shilling and elevenpence like currency of costs accrued in the premises.

Execution issued 12 August, 1789. Returnable 7 January, 1790.

Principal sum	£14	6	10½
Costs	6	1	11
	£20	8	9½

Richard Dobie, of Montreal, Merchant, vs. John Martin, of Detroit, Merchant.

Mr. Roe, the attorney for plaintiff, informed the Court that this action was continued last Court day and that the defendant had been then thrice called and not appearing and a default was recorded against him. The defendant now being called again and entered appearance, and declares he is not indebted in the sum as set forth in the plaintiff's declaration. The Court order the plaintiff to prove his demand on the twentieth of August next.

John Robert McDougall, of Detroit, Gentleman, vs. Isaac Germain, Sergeant in the 65th Regiment.

Mr. Roe, attorney for the plaintiff, mentioned to the Court that this action was entered last Court day, the sixteenth of July, and was continued (by reason of a default being recorded against the defendant) to this day. Whereupon the defendant was this day again thrice called and did not appear. The Court

order a second default to be recorded against him and that the plaintiff shall prove his demand on the twentieth of next August.

Causes under ten pounds sterling.

Leith & Shepherd
vs.
Antoine Charron.

Walter Roe, attorney for the plaintiffs, and the defendant appeared in person and confessed the debt. The Court ordered judgment to be recorded against the defendant for the sum of five pounds, twelve shillings and six pence currency and eleven shillings and eightpence costs with a stay of execution for one month.

Execution issued 24th September, 1789. Returnable in one month.

Debt	£5 12 6
Costs	0 11 8
	£6 4 2

Court adjourned to the 20th of August next.

T. Smith,
Clerk.[10]

Court of Common Pleas, Thursday, 20th of Augt., 1789.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court, etc.

Province of Quebec.
District of Hesse.
ss.

John Askin
vs.
Francis Fontenoy, of Saguinau, Trader.

Charles Smyth for the plaintiff, acting by procuration, filed his declaration. The defendant being thrice called and not appearing, the

Court ordered a default to be recorded against him.

Jonathan Schieffelin vs. Francis Fontenoy, of Saguinau, Trader.

Walter Roe for the plaintiff filed his Declaration. The defendant being called and not appearing, the Court ordered a Default to be entered against him.[11]

Jonathan Schieffelin vs. John Visgar.

Walter Roe, attorney for the plaintiff, filed his Declaration and informed the Court that an attachment had been issued out against certain movables in the hands of the defendant at Sauguinau. The defendant being called and not appearing, the Court ordered a Default to be recorded against him and the seizure to hold good.[12]

James May, vs. Peter Leucks, of St. Anne, Labourer.

Walter Roe for the plaintiff filed his Declaration, and the defendant entered appearance.

Leith & Shepherd, vs. John Pike, of the River a la Tranche, Yeoman.

Walter Roe for the plaintiffs filed his Declaration, and the defendant appeared in person and acknowledged the debt. The Court ordered judgment to be recorded against the defendant, for the sum of twenty-eight pounds, eighteen shillings and ninepence currency, with interest to be thereon computed from the twenty-ninth day of July last until ample payment and the sum of six pounds eighteen shillings and eightpence for costs as accrued in the premises.

Execution issued 24 September, 1789. Returnable 7 January, 1790.

Debt	£28 18 9
Costs	6 18 8
	£35 17 5

Capias ad Satisfaciendum issued 19 November,[13] 1789. Returnable in one month.

Debt	£35 17 5
Writ	0 5 0
Extra costs	1 6 6
	£37 8 11

John Gregory vs. William Thorn.

Walter Roe, attorney for plaintiff, filed his Declaration, and the defendant being thrice called and not appearing, ordered a Default to be entered against him.

Leith & Shepherd vs. William Thorn.

Walter Roe, attorney for plaintiff, filed declaration and the defendant being called and not appearing, ordered a Default to be entered against him.

Thomas Cox vs. Guillaume Gyeaux, of L'assomption, a Writ of an Attachment in the hands of Jos. Pilet for £116.11.8 currency, the sum for which judgment was rendered the 23 July last.

Walter Roe, for the plaintiff, filed his Declaration, and the defendant appeared in person.

As judgment was rendered the twenty-third of July last against the defendant, and execution the twenty-fourth of August, and finding by the Return of the Sheriff that the defendant's goods and chattels, lands and tenements are not sufficient to satisfy the said judgment creditor, and the plaintiff's attorney suspecting that the defendant has property secreted

in the hands of Joseph Pilet, he was therefore summoned before this Court to give his declaration on oath, whom being called and duly sworn, and declared "to have no effects of the defendants in his hands at this time; nor have had at the time of the Service of the Declaration."[14]

Meldrum & Park, of Detroit, Merchants and Co-partners in Trade, vs. John Pike, of the River a la Tranch, Yeoman.

Walter Roe, attorney for the plaintiff, filed his Declaration: and the defendant being called and confessed judgment. Whereupon the Court ordered judgment to be recorded against the defendant for the sum of sixty-seven pounds and twopence currency, with costs of suit and interest to commence from the third day of August last, until perfect payment, the taxed sum for costs being . . .[15]

William Park, by procuration of James Sterling, vs. James Casety,

Walter Roe, for the plaintiff, moved to withdraw the action—Ordered accordingly.

James Fraser, Attorney to the Assignees of Thos. Cox, vs. Pierre La Bute.

Walter Roe, for the plaintiff, filed his Declaration, and the defendant being called and appeared in person and after some altercation, Mr. Roe, the plaintiff's Attorney, moved to discontinue the Suit. The Court ordered the suit to be discontinued accordingly.

James May, of Detroit, Gent, vs. Amable Latour, of St. Anne, Carpenter.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant appeared in person after being called, and confessed the debt, whereupon the Court ordered judgment to be recorded against the defendant for the sum of twenty-two pounds, eight shillings currency with interest to be thereon computed

from the twelfth day of August instant until perfect payment, and the sum of..... cost by him the plaintiff sustained.

Execution issued 8th September, 1789. Returnable 7 January, 1790.

Debt £22 8 0
Cost .....

Isaac Williams, of Sandusky, Trader, vs. Jacques Charron, of L'assomption, Yeoman.

Mr. Roe, attorney for the plaintiff, filed his Declaration and the defendant being called, appeared in person, and denies the debt, and purchase of a lot in the second concession from the plaintiff; but acknowledged to have agreed with him to have the preference of said lot, if the land really was his property and he had a right to dispose of it. And that when he signed the obligation as set forth in the plaintiff's declaration he understood it to be no other instrument than a list of those people whom the plaintiff wished to give the preference to of the lots in the second concession in the parish of L'assomption; where the plaintiff claimed a very large tract by an Indian gift.[16]

Meldrum & Park, of Detroit, Merchants and Co-partners in Trade, vs. Joseph Gamelin, of the Parish of L'assomption.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant being called and appeared in person and confessed the debt, whereupon the Court ordered judgment for the sum of one hundred and fifty-six pounds, eight shillings and one penny half-penny currency with interest from the twelfth day of August instant until perfect payment

and the sum of ..... costs by them, the said Meldrum & Park sustained.

Execution issued 8th September, 1789. Returnable 7 January, 1790.

Debt £156 8 1½
Cost .....

Hugh Heward
vs.
John Askin.

Walter Roe, attorney for the plaintiff, filed his Declaration, and Charles Smyth, attorney by procuration for the defendant, entered appearance.

Isaac Dolson, of L'assomption, Yeoman,
vs.
Joseph Pernier, dite Vadehoncoeur of the River au l'corse.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant being called and appeared in person and acknowledged that the plaintiff was in peaceable and quiet possession of the land in question and that he did enter on the premises in manner and form as set forth in the plaintiff's declaration, which being duly considered the Court ordered the defendant to put the plaintiff immediately in possession of the said premises, and the action to be continued in the meantime.[17]

Meldrum & Park, of Detroit, Merchants and Co-partners in Trade,
vs.
Jean Baptiste Crete, of the same place, Timber Merchant.

Walter Roe, attorney for plaintiffs, filed his Declaration, and the defendant being called and entered appearance.

John Urquhart, of Detroit, Gentleman,
vs.
Jno. Askin, of the same place, Merchant.

Charles Smyth, acting by procuration for the plaintiff, filed his Declaration, and Walter Roe, attorney for the defendant, entered appearance.

OLD CAUSES.

Richard Dobie, of Montreal, Merchant,
vs.
John Martin, of Detroit, Merchant.

This action was continued the twenty-third of July last for the plaintiff to prove his demand this day; in consequence, Walter Roe, attorney for the plaintiff, filed his replication the eighteenth instant in the office. The defendant being now thrice called and not appearing, thereupon the plaintiff's attorney moved for judgment. The Court ordered the action to continue for eight days en deliberè and a second default entered against defendant.

Leith & Shepherd, of Detroit, Merchants and Co-partners in Trade,
vs.
Jean Bte. Leduc, fils, of the Parish of L'assomption, Yeoman.

This action was continued the twenty-third of July last for the defendant to prove his allegations on this day. The defendant being called and appeared, and in support of his plea that he was a minor at the time of subscribing his name to the note in question, produced his *Batistere* which upon investigation it was thereby proved he was not a minor at the time of the execution of said note as set forth in the plaintiff's declaration, and although it was a debt contracted by his father he had by consenting to sign the said note become under an obligation of discharging the said debt. Thereupon the Court after having maturely considered the matter ordered judgment to be recorded against the defendant for the sum of fifteen pounds, nineteen shillings and fourpence halfpenny with interest to be thereon computed from the twentieth of July last until paid, and the sum of six pounds, six shillings and twopence costs by them the plaintiffs sustained in the premises.

Execution issued 19 September, 1789. Returnable 7 January, 1790.

Debt	£15	19	4½
Costs	6	6	2
	£22	5	6½

Meldrum & Park, of Detroit, Merchants and Co-partners in Trade, vs. Joseph Barron, of the Parish of St. Anne, Yeoman.

This action was continued the twenty-third of July last for the plaintiffs to prove their demand on this day. Walter Roe, the plaintiff's attorney being present and the defendant being called and appeared in person, Mr. Roe called on the part of the plaintiffs. "William Christie" their late Clerk being of full age and not interested in this cause and duly sworn. That to the best of his knowledge he delivered to Meldrum & Park's servants, to be carried to the defendant's house, three hundred and eight bushels of Indian corn agreeable to the exhibit A now filed in Court from the month of April to the first of June. That he did not see it delivered but was the person that counted the bags.

Signed upon the Minutes. Wm. C. Christie.

By consent of parties the action is continued for fifteen days.

Meldrum & Park, vs. Pierre LaBute, of the Parish of L'assomption, Yeoman.

This action the Twenty-Third of July last was continued, and ordered that the Plaintiffs do prove their demand this day, the Defendant being therefore called and appeared in person and confessed the Principal Sum as before; but denied to have ever agreed to pay interest.

Be it remembered that on the Twenty-Third day of July last came before His Majesty's Court of Common Pleas for the District of Hesse, Meldrum & Park of Detroit, merchants and co-partners in trade, by Walter Roe, their attorney, and then and there declared that the Defendant was justly Indebted (in the Sum of Forty-Nine Pounds, Six Shillings and fivepence Currency by a Note of hand, with interest to be computed from the date thereof) to the Plaintiffs, which sum though often demanded still remained unpaid, and the said Pierre LaBute having been summoned to appear to answer the Plaint of the said Meldrum & Park in the said Declaration set forth, and thereafter being called personally appeared and denied to have ever agreed with the plaintiffs to pay Interest but acknowledged the Principal Sum, and a delay was allowed to the said Meldrum & Park untill the Twentieth of August following to make proof of the allegations in their said Declaration contained, whereupon the said Meldrum & Park by their said attorney on the Twentieth of August in the same year before the said Court; could not bring proof that the said Pierre LaBute agreed to pay them Interest as set forth in their Declaration, and the said Pierre LaBute again entered appearance on being called by the Court and still denied to have agreed to pay the plaintiffs Interest, all which being duly considered by the Court, Judgment is recorded against the said Pierre LaBute that he pay to the said Meldrum & Park the principal sum of forty-nine pounds,

six shillings and fivepence with.....
of costs by them sustained.

Execution issued 24th September, 1789.
Returnable 7th January, 1790.

Debt	£49	6	5
Costs	8	12	6
	£57	18	11

William Groesbeck, of Detroit, Merchant,
vs.
Joseph Gamelin, of the Parish of L'assomption.

This action was entered the twenty-third of July last, and continued until this day. The defendant being called and appeared by Walter Roe his attorney, and the plaintiff by Charles Smyth his attorney, moved to continue the action for further testimony, which the Court ordered accordingly.

John Robert McDougall, of Detroit, Gentleman,
vs.
Isaac Germain, Serjeant in the 65th Regiment of Foot.

This action was continued last Court day the twenty-third of July last and ordered that the plaintiff proves his demand this day. The defendant being thrice called and not appearing, the plaintiff by his attorney Walter Roe, called as evidence Francois Chartre, who maketh oath that he resided upon Hog Island during a summer season and that the defendant in this cause put on sixty head of cattle in the month of June and took off forty in December and desired the witness to take care of the cattle and he would pay him well, and that if anything happened to the cattle to advertise the defendant. That there were sixty head of cattle in the field first and last,

that the said Francois Chartré declares he is not interested in this cause.

(Signed upon the Minutes)

FRANCOIS CHARTRE.

(His mark.)

The plaintiff's attorney moved to call James May as evidence, whom being of full age and duly sworn and declared not to be interested in this cause, says that he is a tenant on Hog Island and receives twenty shillings per head for cattle put on the island for the season, whether they remain or not.

(Signed on the Minutes.) JAMES MAY.

This action is continued and remain en deliberè for eight days.

McKellip & Jacob, of Detroit, Merchants and Co-partners in Trade, vs. Claude Salaut, of St. Anne, Yeoman.

This action was entered the twenty-third of July last and continued to this day for the plaintiffs to prove their allegations. Walter Roe, attorney for the plaintiffs, filed his replication and the defendant being thrice called and not appearing, it is ordered that a Default be entered against him and the action be continued for eight days.

Thomas Smith, vs. J. Bte. Crete, of St. Anne.

This action was entered last Court day, the twenty-third of July, and continued until this day. The defendant being called and appeared, and the plaintiff moved for continuance of the action for eight days on account of not having his papers prepared. The same was ordered accordingly.

CAUSES UNDER TEN POUNDS STERLING.

James Fraser, as Attorney to the Estate of Jno. Casey, vs. Dominique LaBrosse.

Walter Roe, attorney for the plaintiff, and the defendant entered appearance.

William Pawling vs. Dominique LaBrosse.

Walter Roe, attorney for the plaintiff, and the defendant appeared and acknowledged the debt. The Court ordered judgment to be recorded against the defendant for the sum of one pound, twelve shillings and sixpence currency, with costs of suit being eleven shillings and eightpence.

James Fraser, as Attorney to the Assignees of Thomas Cox, vs. Dominique LaBrosse.

Walter Roe, attorney for the plaintiff, and the defendant entered appearance.

James Fraser vs. Dominique LaBrosse.

Mr. Roe, for the plaintiff, and the defendant appeared and acknowledged the debt. The Court ordered judgment be recorded against the defendant for the sum of three pounds, five shillings and fivepence currency, and the sum of eleven shillings and eightpence for costs.

James Fraser, as Attorney to the Assignees of Thomas Finchley, vs. Dominique La-Brosse.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a Default be entered against him.

James Fraser as Attorney to the Estate of John Casety, vs. Pierre La Bute.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a Default be entered against him.

James Fraser, as Attorney to the Assignees of Thos. Williams & Company, vs. Dominique La Brosse.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a Default be entered against him.

James Fraser
vs.
Pierre La Bute.

Walter Roe, attorney for the plaintiff, and the defendant appeared and confessed the debt. The Court ordered judgment be recorded against the defendant for the sum four pounds, four shillings and fourpence halfpenny currency, and the sum of eleven shillings and eightpence costs.

Execution issued 24 September 1789. Returnable in one month.

Debt	£4 4 4½
Costs	0 11 8
	£4 16 0½

James Fraser, as Attorney to the Assignees of Thomas Finchley,
vs.
Joseph Mallett.

Walter Roe, attorney for plaintiff, and the defendant appeared. The action is continued at the instance of the plaintiff's attorney.

James Fraser, as Attorney to the Assignees of Thomas Finchley,
vs.
J. Bte. Rheaume.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a Default be entered against him.

James Fraser, as Attorney to the Assignees of the estate of Thos. Williams & Co.,
vs.
J. Bte. Rheaume.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a Default be entered against him.

Mathew Dolson
vs.
John Suittor.

Walter Roe, attorney for the plaintiff, and the defendant appeared. The action is continued for fifteen days for the plaintiff to prove his demand.

J. Bte. Geniack, vs. J. Bte. Laflamboise.

The parties appeared and for want of sufficient proof on the part of the plaintiff the action is continued for Eight days.

George McClure vs. Andre Decaroux.

The parties appeared, and the defendant acknowledged to have purchased a watch from the plaintiff, but alleged to have paid the plaintiff's brother by the plaintiff's consent, but cannot produce a receipt. If the defendant should hereafter produce a receipt from plaintiff's brother the money must be returned. The Court ordered judgment be recorded against the defendant for the sum of four pounds, ten shillings currency, and the sum of eleven shillings and eightpence costs by him sustained.[18]

Frederick Arnold vs. J. Bte. Leduck, fils.

Walter Roe, attorney for the plaintiff, and the defendant appeared, and by consent of parties Claude Rheaume and Isaac Dolson are nominated to estimate the damages in the detention of the plaintiff's horses and to call in the third person in case of difference, reserving to the Court the right of imprisonment of said horses, and to make their report in eight days.

Court adjourned to 27th of August, 1789.

T. S.

Province of Quebec. District of Hesse. ss.

COURT OF COMMON PLEAS held in the Parish of L'assomption on Thursday, the twenty-seventh day of August, in the year one thousand seven hundred and eighty-nine.

Present: The Honorable William Dummer Powell, Esquire, First Judge of said Court.

NEW CAUSES

Jacques Charron
vs.
Pierre Prout.

Walter Roe, attorney for the plaintiff, filed his Declaration and the defendant appeared in person and confessed judgment, whereupon the Court ordered judgment to be recorded against the defendant for the sum of fourteen pounds, eighteen shillings and fourpence currency, and the sum of seven pounds, nine shillings and sixpence of costs by him sustained.

John Askin, of Detroit, Merchant,
vs.
William Lamothe.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant being thrice called and not appearing, ordered that a default be entered against him.

Catherine Desriviere Lamoinodiers,
vs.
Antoine Dagnio Dequindre.

Walter Roe, attorney for the plaintiff, filed his Declaration and the defendant being thrice called and not appearing, ordered that a default be entered against him.[19]

OLD CAUSES ABOVE TEN POUNDS STERLING.

Jonathan Schieffelin
vs.
Francis Fontenoy.

This action was continued the twentieth of August last by reason of a Default and this day the defendant was thrice called and not appearing, a second default is ordered to be entered against him, and Walter Roe, the plaintiff's attorney, agreed to continue the action for eight days longer, and accordingly the Court made it a Rule.

John Askin
vs.
Francis Fontenoy.

Charles Smyth, acting by Procuration for the plaintiff, agreed to continue the action for eight days after the defendant being thrice

called and the Second Default entered against him.

The same made a Rule that this action be continued for eight days.

Jonathan Schieffelin vs. John Visgar.

The defendant being thrice called and not appearing, ordered that a Second Default be entered against him, and Walter Roe, the plaintiff's attorney, agreed to continue this action for eight days, and accordingly the same being made a Rule.

James May vs. Peter Leukes.

This action was continued the twentieth of August last. The defendant being called for the second time and appeared, and acknowledged his signature to the note in question.

District of Hesse. ss.

Be it remembered that on the twentieth of August last came before His Majesty's Court of Common Pleas for the said District James May, of Detroit, Gentleman, by Walter Roe, his Attorney, and then and there declared that the Defendant was justly indebted to him in the Sum of Eleven Pounds, Five Shillings Currency, and the said Peter Leucks, having been summoned to appear to answer the Plaint of the said James May in the said Declaration set forth and after being thrice called, entered appearance, and eight days from the said twentieth of August given to the said James May to make proof of the allegations in his said Declaration contained, Thereupon on the Twenty-Seventh of August in the said year came the said James May by his said Attorney

and produced the said Peter Leukes' Note of Hand, the signiture of which he the said Peter Leucks, who then appeared and acknowledged to be his proper hand-writing, whereupon the Court ordered Judgment be recorded against the said Peter Leukes that he pay the said James May the sum of Eleven pounds, five Shillings Currency, with Six pounds, eight Shillings and twopence of Costs by him sustained.

Execution issued 19 September, 1789. Returnable 7 January, 1790.

Debt	£11	5	0
Costs	6	8	2
	£17	13	2

John Gregory of Montreal, Merchant, vs. William Thorn, of Detroit.

The defendant being thrice called and not appearing—Ordered a Second Default be entered against him.

Walter Roe, attorney for the plaintiff, moved to prove his demand and to call James May then in Court as evidence in his behalf whom being of full age and not interested in anywise in the event of this action and being duly sworn, declared that he had often seen the defendant Wm. Thorn write and verily believe that the name *Wm. Thorn* subscribed to the Exhibit now filed by the plaintiff to be of his proper hand writing.

Signed upon the Minutes. JAMES MAY.

District of Hesse. ss.

Be it remembered that on the Twentieth of August, in the year One Thousand Seven Hundred and Eighty-nine, came before His Majesty's Court of Common Pleas for the said District, John Gregory, of Montreal, Merchant in the Province of Quebec, by Walter Roe, his Attorney, and then and there declared that the said William Thorn was justly indebted in the Sum of Sixty-Seven pounds, twelve Shillings and one penny Currency, and the said William Thorn having been Summoned to appear to answer the Plaint of the said Jno. Gregory in the said Declaration set forth, and being thrice called and not appearing. The Default of said William Thorn was recorded and the Eighth day from the said Twentieth of August (the date of the Return) given to the said John Gregory to make proof of the allegations in his said Declaration contained: whereupon on the Twenty-Seventh of August, in the said year came the said John Gregory by his said attorney and made proof by the oath of James May, of Detroit, Gentleman, that the name *Wm. Thorn* subscribed to a certain note of hand then by the said Jno. Gregory's attorney to the Court produced (and on which the demand of the said John Gregory in his declaration was grounded) was of the proper hand-writing of said William Thorn, and thereupon the said William Thorn being again Thrice called and not appearing, the said John Gregory by his said attorney prayed that his Second Default might be recorded and that for the Profit of such Default obtained He might have Judgment for his said

Debt and Costs, all which being duly considered by the Court, Judgment is recorded against the said William Thorn that he pay to the said John Gregory the sum of Sixty-Seven Pounds, Twelve Shillings and one penny Currency of this Province with ....,of Costs by him sustained, and Interest from the Twenty-Ninth of July last, until perfect Payment, on the said Sum of Sixty-Seven pounds, Twelve Shillings and one penny.

Leith & Shepherd, vs. William Thorn.

The defendant being called three times and not appearing, ordered that a Second Default be entered against him, and Mr. Roe, the plaintiff's attorney, moved for a further delay of eight days to prove his demand.

Isaac Williams vs. Jacques Charron.

Walter Roe, attorney for the plaintiff, and the defendant appeared. Ordered a peremptory delay for one month.

Hugh Heward vs. John Askin.

Walter Roe, attorney for the plaintiff, and Charles Smyth acting by Procuration for the defendant, and by consent of parties the Court order the action to continue for eight days.

Isaac Dolson vs. Joseph Pernier dite Vade-boncoeur.

Walter Roe, attorney for the plaintiff. The defendant appeared and by consent of parties, the Court order a continuance for eight days.

Meldrum & Park vs. Jean Bte. Crête.

Walter Roe, attorney for the plaintiff. The defendant appeared, and by consent of parties the Court order a delay of eight days.

John Urquhart
vs.
John Askin.

Charles Smyth, acting by procuration for plaintiff, filed replication and Walter Roe, for the defendant filed plea.

Richard Dobie
vs.
John Martin.

Walter Roe, attorney for the plaintiff, the defendant being thrice called and not appearing.

District of Hesse.
ss.

This is an action, the gist of which is a Record of Judgment in another Court. To this the defendant has pleaded that he owes nothing, but as he has set up no payment or release of judgment, I must presume the meaning of his plea to be the proper issue and a traverse of the Record or Judgment. It seems so to be understood by the replication of the plaintiff who again relies upon and proffers the record. The evidence filed is equally insufficient to support the action, upon the rules of evidence either of the ancient or present laws of the Province, the office copy of the record being neither upon parchment or under seal; Wherefore the Court considers that judgment be entered as in case of a non-suit.[20]

William Groesbeck
vs.
Joseph Gamelin.

Mr. Charles Smyth, acting by Procuration for the plaintiff, and Mr. Walter Roe, attorney for the defendant, entered appearance, and by consent of parties the action ordered to be continued for eight days.

McKellip & Jacob
vs.
Claude Salaut.

Walter Roe, attorney for the plaintiff. The defendant being thrice called and not appearing. It is ordered that a second default be

entered against him, and for the want of sufficient proof on the part of the plaintiff that the defendant took the goods in question upon himself, eight days delay is allowed to prove his demand.

John Robert McDougall vs. Isaac Germain.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing.

Province of Quebec. District of Hesse. ss.

Be it remembered that on the Sixteenth day of July, in the year One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, John Robert McDougall of Detroit, gentleman in the said District, by Walter Roe, his Attorney, and then and there declared that Isaac Germain, sergeant in the Sixty-fifth Regiment of Foot, was justly Indebted to him in the sum of Thirty Pounds, Nine Shillings and Sixpence, Currency, for the Grazing of cattle on Hog Island during the Summer and Autumn, One Thousand Seven Hundred and Eighty-eight, and that the said Isaac Germain, having been Summoned to appear to answer the Plaint of said John Robert McDougall, in his said Declaration set forth, and being thrice called and not appearing, the Default of the said Isaac Germain was recorded, and the Eighth day from the said Sixteenth of July, given to the said John Robert McDougall to make proof of the allegations in his said Declaration contained, whereupon on the Twenty-Third of July, in the said year, came the said John Robert Mc-

Dougall by his said attorney, and the said Isaac Germain being again thrice called and not appearing, the Second Default of the said Isaac Germain was recorded and a further delay was allowed to the said John Robert McDougall to make proof of his demand from the said Twenty-Third of July to the Twentieth of August, following upon which day the said Isaac Germain was thrice called and not appearing, and the plaintiff, by his said attorney, made proof by the oath of Francois Chartré that the said Isaac Germain had Sixty head of Cattle on Hog Island first and last, and by the oath of James May, Tenant of Hog Island, that he received Twenty Shillings per head for Cattle put upon said Island for and during the Season whether they remained or not, and from the said Twentieth day of August the action remained en Deliberé until the Twenty-Seventh of the same month in the same year on which day the defendant was again thrice called and not appearing, all which being duly considered by the Court, Judgment is recorded against the said Isaac Germain, that he pay to the said John Robert McDougall the Sum of Thirty Pounds, Nine Shillings and Sixpence, Currency of this Province, with Interest from the said Twentieth day of August until actual payment, and the Sum of Nine Pounds, Nine Shillings and fivepence of Costs by him sustained.

Execution 19th September, 1789. Returnable 7 January, 1790.

Debt	£30	9	6
Costs	9	9	5
	£39	18	11
Writ	0	5	
	£40	3	11

Alias fi. fa. issued 2 October, 1789. Returnable the first Court day in June, 1790.

Debt	£40	3	11
Subsequent Costs ...	1	15	0
	£41	18	11

Thomas Smith, Esq.,
vs.
Jean Bte. Crête.

Walter Roe, of full age and disinterested, acted as Clerk and duly Sworn.
Signed, W.D.P.

The parties appeared in person, and the plaintiff came forth and filed the report made on the amounts by Hugh Heward and John McPherson, being auditors mutually chosen by the parties interested, to which report they now both agree to, and the defendant thereupon confessed judgment.

Signed WALTER ROE.[21]

District of Hesse.
ss.

Be it remembered that on the Twenty-third of July in the year one Thousand Seven Hundred and Eighty-nine came before his Majesty's Court of Common Pleas for the said District, Thomas Smith, Esquire, and then and there declared that Jean Baptiste Crête, of Detroit, was justly Indebted to him in the sum of Nine Hundred and Thirty-four Pounds, fifteen Shillings and Threepence, Currency of the Province of Quebec, and the

said Jean Baptiste Crête having been summoned to appear to answer the Plaint of the said Thomas Smith in the said Declaration set forth, and the Defendant being called and entered appearance, and Twenty-eight days was allowed to the Plaintiff to make proof of the allegations in his said Declaration contained, whereupon on the Twentieth of August, in the said year, came the said Thomas Smith and prayed continuance for Eight days longer for to make proof of his allegations, which was granted with the consent of the Defendant, and on the Twenty-Seventh of August the parties again appeared, and the Plaintiff filed a Report of auditors by them mutually chosen to which the defendant declared to have no manner of objections to the same and confessed judgment. Thereupon Judgment is recorded against the said Jean Baptiste Crête that he pay to the said Thomas Smith the Sum of Seven Hundred and Seventy-five Pounds, Six Shillings and Sixpence, Currency of the Province of Quebec, with Lawful Interest from the Twentieth of July last in the said year until actual payment and the sum of..... of costs by him sustained.

CAUSES UNDER TEN POUNDS

James Fraser as Attorney to the Assignees of Thomas Finchley, vs. Dominique La Brosse.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing. The plaintiff filed the defendant's note of hand.

James Fraser, as Attorney to the Assignees of the Estate of Thomas Williams & Coy., vs. Jean. Bte. Rheaume.

Walter Roe, for the plaintiff, moved to mend his Declaration, which was granted by the Court and ordered that a Rule be served upon the defendant to appear in this Court on Thursday next.

Frederick Arnold vs. Jean Baptiste Laduck, fils.

Walter Roe, for the plaintiff, filed Award and the defendant appeared and by consent of parties the action is continued for eight days.

Francois Latour vs. Louis Trudel.

The parties appeared, and for further testimony the action is continued for eight days.

The Court adjourned to 3 September.

Court of Common Pleas.

Province of Quebec. District of Hesse. ss.

Thursday the 3rd day of September, 1789.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

Bailiffs Sworn.

John Smith, Pierre Sęra dite Lavictoire, and Joseph Elam, sworn in this day as Bailiffs. T.Sm.

James Fraser, Curator[22] to the Succession of Samuel Judah, vs. Charles Chene.

Walter Roe, for the plaintiff, filed his Declaration and two notes of hand. The defendant appeared and acknowledged the notes as set forth in the plaintiff's Declaration; but for plea prayed continuance for eight days.

James Fraser, Curator to the Succession of Samuel Judah, vs. Charles St. Obean.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant appeared in person and denied his signature to a certain note of hand as set forth in the plaintiff's Declaration. The action is continued for eight days for the plaintiff to prove the note.

Magdelaine Peltier, spouse of Jacques Peltier, vs. Laurent Maure.

The plaintiff filed her declaration, and the defendant appeared in person. The Court having taken the matter into consideration and find that the plaintiff is under coverture and not authorized by a letter of attorney from her husband. It is ordered that the action be dismissed.[23]

Thomas Finchley vs. Jean Baptiste Cecot.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant appeared in person and confessed the debt as specified in a note of hand set forth in the plaintiff's Declaration.

Province of Quebec. District of Hesse. S.S.

Be it remembered that on the Third day of September, came before His Majesty's Court of Common Pleas for the said District, Thomas Finchley, by Walter Roe his Attorney, and then and there declared that the Defendant was justly Indebted in the sum of Twenty-One pounds, one Shilling and 10d., Currency of the said Province, and the said Jean Bte. Cecot having been Summoned to appear to answer the Plaint of the said Thomas Finchley in the said Declaration set forth, and then and there before the said Court confessed Judgment, whereupon Judgment was accordingly recorded against the said Jean

Bte. Cecot that he pay to the said Thomas Finchley the Sum of Twenty-one pounds, one Shilling and tenpence, Currency of said Province, with Six pounds, Seven Shillings and Sixpence of Costs by him sustained.

Execution issued 19 September, 1789. Returnable 7 January, 1790.

Debt	£21	1	10
Costs	6	7	6
	£27	9	4

Thomas Finchley
vs.
Pierre Chene.

Walter Roe, for the plaintiff, filed his Declaration and a note of hand. The defendant appeared and acknowledged the said note, but said he had made sundry payments on account which were not endorsed. The Court thereupon ordered the plaintiff to produce his books and prove the allegations as set forth in his Declaration in eight days.

Jean Baptiste
Tourongeau,
L'assomption,
vs.
François Latour.

Walter Roe, attorney for the plaintiff, filed his Declaration. The defendant appeared in person and denied that he owes anything to the plaintiff, that he has settled all accounts with him in proof of which he has filed an acquittance.

Richard Dobie,
of Montreal,
Merchant,
vs.
John Martin,
of Detroit,
Merchant.

Walter Roe, for the plaintiff, filed Declaration and the defendant being thrice called and not appearing. It is ordered that a default be recorded against him.

James Fraser, Attorney by Procuration of Thomas Cox, vs. Pierre LaBute, of L'assomption.

Walter Roe, for the plaintiff, filed Declaration, and the defendant appeared and denies to owe anything to the plaintiff. Mr. Roe, the plaintiff's attorney, replies that the defendant is indebted agreeable to his Declaration, and on his motion. It is ordered that a Rule be entered for trial next Court day, the tenth instant.

James Fraser, Curator to the Succession of Thos. Williams and John Casety, vs. René Cloutier, of L'assomption.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant personally appeared and acknowledged the debt specified by a note of hand now filed by the plaintiff.

Province of Quebec. District of Hesse. S.S.

Be it remembered that on the Third day of September, in the year One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, James Fraser, Curator to the Succession of Thos. Williams & Co'y., by Walter Roe, his Attorney, and then and there Declared that Renè Cloutier, of L'assomption, was indebted to him in the Sum of Forty-Seven pounds, five Shillings, Currency of said Province, due by a Note of Hand, and the said René Cloutier having been Summoned to appear to answer the Plaint of the said James Fraser, and then and there before the said Court acknowledged the Note as set forth in the Plaintiff's Declaration, whereupon Judgment is recorded against the said René Cloutier that he pay unto the said James Fraser the sum of Forty-Seven Pounds, five Shillings, Currency of said Province with ..... of costs by him sustained, and the

interest of 6 per cent. on the said Forty-Seven Pounds, five Shillings from the first of August last until perfect Payment.

Execution issued 19 September, 1789. Returnable 7 January, 1790.

Principal sum £47 5 0
Costs .....

James Abbott, of Detroit, Merchant, vs. Jean Bte. Campeau, of St. Anne, Yeoman.

Walter Roe, attorney for the plaintiff, filed his Declaration, and the defendant being called and entered appearance.

Charles McCormick vs. Alexander McKee, Esquire, of Detroit, D. Agent of Indian affairs.

Charles Smyth, attorney for the plaintiff, by special Procuration filed his Declaration, and Walter Roe, attorney for the defendant, entered appearance.

Antoine Jalbert vs. Jonathan Schieffelin.

Charles Smyth, attorney for the plaintiff, by procuration filed his declaration. The defendant appeared and says that he owes nothing to the plaintiff, but that he is indebted to him two hundred and thirty-one livres, for which he prays to become an incidental plaintiff and filed the plaintiff's engagement subscribed by him at Detroit, and offers to bring proof that the defendant did not perform his engagement, and also files the account, items of which he begs leave to prove.[24]

John Askin, of Detroit, Merchant, vs. William LaMothe, Esq., of the same place.

Walter Roe, for the plaintiff, and the defendant being thrice called and not appearing, ordered that the Second Default be recorded against him.

Province of Quebec.
District of Hesse. S.S.

Be it remembered that on the Twenty-Seventh day of August, in the year One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, John Askin, of Detroit, merchant, by Walter Roe, his Attorney, and then and there declared that the Defendant was justly Indebted to him in the sum of Twenty-Three pounds, Eleven Shillings, Currency of said Province, and the said William Lamothe having been summoned to appear to answer to the Plaint of the said John Askin in the said Declaration set forth, and being thrice called and not appearing the Default of the said William Lamothe was recorded, and the eighth day from the said Twenty-Seventh of August given to the said John Askin to make proof of the allegations in the said Declaration contained, whereupon on the Third day of September, in the said year, came the said John Askin, by his said Attorney, and the said William Lamothe being again thrice called and not appearing, the said John Askin, by his said attorney, prayed that his Second Default might be recorded, and that for the profit of such Default obtained he might have Judgment for his debt and costs, all which being duly considered by the Court Judgment is recorded against the said William Lamothe, that he pay to the said John Askin the sum of Seventy Pounds, three pounds, Eleven Shillings, Currency of the said Province, with Interest from the Twenty-Sixth of August last until perfect payment

and the Sum of ..... costs by him the said John Askin sustained.

Catherine Desriviere, Lamoinodiers, vs. Her Husband, Antoine Daginis Dequindre.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered the Second Default be entered against him.

Jonathan Schieffelin vs. Francis Fontenoy, of Saguinau, Trader.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing.

Called as Evidence.

Mr. Charles Gouin, du Detroit, Marchand Temoine applé le part du demandeur appre serment faite sur le Saint Evangille á declaré qu'il n'est aucunement interessé dans l'evenement de cette poursuit et quil á connoisance que le nommé Charles Bellard Engagé du Demandeur étté employer au service du defendeur l'hivert dernier, que le deposent étté present à une dispute entre le demandeur et defendeur ou il à pris que l'Homme étté engagé jusque au fin de Juin, et que l'quitté de service de Fontenoy au Quators de Juin il refuser de tenire Compte à Mr. Schieffelin de ce Gage il dise que étté forfeit par son desertion—que le Deposent avoit entendre dire que Mr. Schieffelin devoit avoir Vingt Ponds pour le service de son Engagé jusque à la fin de Juin, que le dite Mr. Gouin avoit aucune connoisance de cette Vingt Ponds étté payer—et que le Engagé Bellard à laisser de Service du Defendant vers le cinq de Juin dernier.

(Signé) Charles Gouin.

John Askin, Junior, of full age and not interested in this cause, called as evidence on the part of the plaintiff and duly sworn, That he was present at the execution of the exhibit B, now filed in Court, and that he saw Charles Bellair make his mark at the foot thereof and knows him to be the same person who was transferred by Mr. Schieffelin into the service of Francis Fontenoy.

(Signed upon the Minutes),
JOHN ASKIN, JUNR.

Province of Quebec.
District of Hesse.
T.S.

Be it remembered that on the Twentieth day of August, in the year of our Lord One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, Jonathan Schieffelin, of Detroit, Gentleman, by Walter Roe, his attorney, and then and there Declared that Francis Fontenoy, of Saguinau, trader, was justly Indebted to him in the Sum of Twenty-four pounds, two Shillings and Sixpence, and the said Francis Fontenoy having been Summoned to appear to answer the Plaint of the said Jonathan Schieffelin in his said Declaration set forth and being three called and not appearing, the Default of the said Francis Fontenoy was recorded, and eight days allowed to the said Jonathan Schieffelin to make proof of the allegations in his said Declaration contained, whereupon on the Twenty-Seventh day of August in the said year came the said Jonathan Schieffelin by his said Attorney, and the said Francis Fontenoy being again thrice

called and not appearing, the Second Default ordered to be recorded against him and the action to be continued for Eight days longer by consent of the plaintiffs, and on the third of September in the same year came the said Jonathan Schieffelin again by his said attorney and made proof by the oath of Charles Gouin and John Askin, Junior, all which being duly considered by the Court Judgment is recorded against the said Francis Fontenoy, that he pay to the said Jonathan Schieffelin the Sum of Twenty-four pounds, four Shillings and Six-pence, Currency of said Province, with lawful Interest from the Twentieth of July, last, untill perfect payment and the sum of ..... costs by him sustained.

George Leith and Thomas Shepherd, of Detroit, Merchants and Co-partners, vs. William Thorn.

Walter Roe, attorney for the plaintiff, filed a Bon and the defendant being three times called and not appearing, called as evidence John McGregor of full age and not interested in the event of this action, and being duly sworn, "says to have seen the said William Thorn sign the exhibit A now filed in Court."

Signed, on the Minutes, JOHN MCGREGOR.

Province of Quebec. District of Hesse. s.s.

Be it remembered that on the Twentieth of August, in the year one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, George Leith and Thos. Shepherd, of Detroit, Merchants and Co-partners in trade by Walter Roe, their Attorney, and then and there declared that the said William

Thorn was justly Indebted to them in the Sum of Twenty-Nine Pounds, Nine Shillings, Currency of the said Province, and the said William Thorn having been summoned to appear to answer the Plaint of the said Leith and Shepherd in their said Declaration set forth, and being thrice called and not appearing the Default of said William Thorn was recorded, and Eight days given to the said Leith and Shepherd to make proof of the allegations in their said Declaration contained, whereupon on the Twenty-Seventh of August, in the said year, came the said Leith and Shepherd, by their said Attorney, and prayed further delay to make proof of their allegation, and the said William Thorn was again Thrice called and not appearing and the Second Default was recorded against him. On the Third of September in the said year came the said Leith and Shepherd, by their said Attorney, and made proof by the oath of Jno. McGregor that the name William Thorn subscribed to a certain Note of Hand then by the said Leith and Shepherd to the Court produced was of the proper hand writing of the said William Thorn, and the said William Thorn being again thrice called and not appearing, all which being duly considered by the Court, Judgment is recorded against the said William Thorn that he pay to the said George Leith and Thomas Shepherd the sum of Twenty-Nine Pounds, Nine Shillings, Currency of the said Province, with ..... of costs by them sustained with Interest from the Twenty-Ninth of July last untill perfect payment.

Meldrum & Park,
of Detroit,
Merchants,
vs.
Jean Bte. Crête,
Timber Merchants.

Walter Roe, attorney for the plaintiffs, and Charles Smyth, acting by special Procuration from the defendant, entered appearance and by consent of parties the action is continued for eight days.

Hugh Heward, of
Detroit, Gent.,
vs.
John Askin,
of the same place,
Merchant.

Walter Roe, attorney for the plaintiff, and Charles Smyth, by Procuration for the defendant. On motion of Mr. Roe the Court order the record to be made up.

Isaac Dolson, of
L'assomption,
Yeoman,
vs.
Joseph Parnier,
dite Vadboncoeur.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing. The action is continued at the instance of Mr. Roe.

McKillip and
Jacobs
vs.
Claud Solaut.

Walter Roe, attorney for the plaintiff, and the defendant entered appearance and by consent of parties the action is continued for eight days.

William Groesbeck
vs.
Joseph Gamelin.

Charles Smyth, acting by Procuration for plaintiff, and Walter Roe, attorney for defendant, and on motion of Mr. Smyth the action continued for Trial in eight days.

John Urquhart,
of Detroit,
Gentleman,
vs.
John Askin.

Charles Smyth, acting by Procuration for the plaintiff, and Walter Roe, attorney for the Defendant, on Motion of Mr. Smyth this action to continue for Trial in eight days.

John Askin,
of Detroit,
Merchant,
vs.
Francis Fontenoy,
of Saguinau,
Trader.

Charles Smyth, acting by Procuration for the plaintiff, and the defendant being thrice called and not appearing—called as evidence on the part of the plaintiff, William Christie,

of full age and not interested and duly sworn and the exhibit marked A being shown to him and declared "to have been present when the said Francis Fontenoy subscribed the initials of his name F. F. to the said exhibit."

Signed on the Minutes, WM. CHRISTIE.

Province of Quebec. District of Hesse. s.s.

Be it remembered that on the Twentieth day of August, in the year one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, John Askin, of Detroit, Merchant, by Charles Smyth, his attorney by Special Procuration, and then and there Declared that the said Francis Fontenoy was justly Indebted to him by Note of Hand in the Sum of Nine Hundred and Nineteen Pounds, thirteen Shillings and Ninepence, Currency of this said Province, and that the said Francis Fontenoy, having been summoned to appear to answer the Plaint of the said John Askin in his said Declaration set forth, and being thrice called and not appearing the Default of the said Francis Fontenoy was recorded and Eight days allowed to the said John Askin to make proof of the allegations in his said Declaration contained and on the Twenty-Seventh of August in the said year came the said John Askin by his said Attorney, and the Defendant being again thrice called and not appearing, upon which it was ordered that a Second Default be entered against him and by consent of Plaintiff a Rule for continuance for eight days, whereupon on the Third day of September in same

year came the said John Askin, again by his said Attorney, and made proof by the oath of William Christie that the letters F. F. to a certain Note of Hand then produced to the Court and on which the demand of the said John Askin in his said Declaration was grounded, is the proper mark of the said Francis Fontenoy, and thereupon the said Francis Fontenoy, being again Thrice called and not appearing, all which being duly considered by the Court, Judgment is recorded against the Said Francis Fontenoy that he pay to the said John Askin the Sum of Nine Hundred and Nineteen Pounds, Thirteen Shillings and Ninepence, Currency of said Province, with Nine Pounds, Seven Shillings and Sixpence of costs by him sustained, and Interest from the Twentieth of July last, until actual payment.

Debt	£919	13	9
Costs	9	7	6
	£929	1	3

Execution issued. Returnable 24 June, 1790.

Jonathan Schieffelin, of Detroit, Gentn., vs. John Visgar, of Saguinau, Trader.

Walter Roe, attorney for the plaintiff, and the defendant being three times called and not appearing—called as evidence on the part of the plaintiff Charles Gouin, of Detroit, merchant, not interested in this cause and duly sworn, and says, " Que il y ait connoisance de Mr. Schieffelin avez laissé du sucre chez Mr. Visgar quelle condition il se pas.

Signé CHARLES GOUIN.

Called the second evidence on the part of the plaintiff, Robert Gourneau, of full age and not interested, and duly sworn and says, " Il sai, que dans le mois de Mai ou commencement de Juin dernier que Mr. Schieffelin à deposer au chez Mr. Visgar dix quarts et deux Barril du sucrue que lui avez laisse pas que son batteaux étté trop charger, et que les Quarts étté plus que trente gallons chaque."

Signé Robert Gourneau.
(Sa Mark.)

Called the third evidence on the part of the plaintiff of full age and not interested, and duly sworn and says that he does not know anything respecting the said sugar.

The action continued by consent of the plaintiff for eight days.

Meldrum & Park vs. Joseph Barron.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered that a Default be entered against him.

Thomas Cox vs. William Gyeaux.

The Sheriff made his Return with divers oppositions annexed to the sale of the effects seized—and cannot any further proceed until the claims of the different opponents are first satisfyed and paid; or secured upon the proceeds.

On the opposition of Nicholas Gyeaux.

In support of his opposition produces Jean Bte. Baubien and André Peltier, who being

duly sworn deposeth and saith, First Jean Bte. Baubien: "Que Guillaume Gyeaux lui à dit plusieur fois, il y ait deux mois meme que son nephew Nicholas Gyeaux opposent avez Semméz chez lui en scosiété douze meniot de bled fremment, douze minot de Voine et une minot des Poids et que lui croix dans sa conscience pour est veritable."

Signé JEAN BTE. BAUBIEN.

The Second, Andre Peltier, que L'automne passer: "Nicholas Gyeaux l'opposent à proposer Semmez la terre de son oncle a motie et laisser la sciene en Park, qu'il sai qui Nicholas Gyeaux a fait la Garais chez son oncle, et que il croix dans sa conscience s'étté á mottier entre l'oncle et nephew."

Signé ANDRE PELTIER sa marque
after read to the Deponant. T.S.

On the opposition of Charles Prout.

The said Baubien being sworn further declares: "Que Guillaume Gyeaux et Charles Prout lui avez dit que ce derniere étté en Simmenser chez le primiere une Pièce de Bled Fremment et une Pièce de Voine à son proper profit." On a X question by Mr. Roe the plaintiff's attorney further says: "Que ce qu'il entendu acclammé le Recolt chez Gyeaux par Charles Prout, qui ce jour passér depuis l'instruction de procés."

Nicholas Gyeaux, being sworn and not interested in this present claim and of full age says: "Que il y ont la Terre son oncle à

mottier. Prout avez demander permission de Semmez pour lui meme une pièce et qu'il y ait connoissance actuel que Prout avoit cultivier et Simmensé cette Pièce sans aucune aide de Guillaume Gyeaux—que qu'il croix avoir cinq meniot de Bled Fromment et quatre minot de voine."

On the opposition of Louis Gyeaux.

The oponent produces Nicholas Gyeaux his brother as evidence to support his claim, Whereupon Mr. Roe, the plaintiff's attorney opposed his testimony being received in as much as he is not a competent evidence as required by law "being a brother to the opponent"—the Court will consider of the objection; and Nicholas Gyeaux being sworn "Que appre l'instruction de ce procés mai devant le Jugement rendû son oncle Guillaume Gyeaux lui a dit que une de ce vache éttoit a Louis Gyeaux le opposent que lui a livré la vache a son Frere que lui a laisser dans le park de opposent avec les otre annimaux de defendeur et qui cette vache et une de celle prix en Execution."

Signed Nicholas Gyeaux (sa mark after being read to the Deponent. T. S.)

Court admits on the opp. of N. Gyeaux.

The produce of twelve bushels of Wheat, twelve bushels of Oats and one bushel of Peas to be divided in equal parts, one-half to the deponent and one-half to be sold by the Sheriff for part satisfaction of the plaintiff's Judgment.

Court admits on ye opposition of C. Prout.

The proceeds of five bushels of wheat and the proceeds of an Indian corn patch, situate about twelve acres from the River, which the Sheriff is hereby authorized not to take, and is, therefore, discharged of so much of the proceeds.

Court admits on the opposition of Louis Gyeaux.

The Seizure of a small red cow is discharged, which the Sheriff will deliver up to him.

On the opposition of Alexis Maisonville.

It being not sustainable the Court order the Sheriff to proceed without any further regard thereto.

CAUSES UNDER TEN POUNDS STERLING.

J. Bte. Parry Hypolite Lasalline.

The parties appeared, and after hearing their allegations the Court duly considered the same and thereupon ordered Judgment to be recorded against Hypolite Lasalline, that he pay to the said J. Bte. Parry the sum of six pounds and tenpence, currency of Quebec, with ..... of costs by him sustained.

Philip Fox vs. Pierre Durand.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the Court after taking the matter into consideration ordered Judgment be recorded against the defendant, that he return the meat of a hog which he killed belonging to the plaintiff (or to pay him three pounds, New York currency) and pay the sum of ..... costs by him sustained.[25]

Thomas Cox vs. Jordan Ivory.

Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing.

Thomas Finchley vs. Joseph Mallet.

Walter Roe, attorney for the plaintiff, and the defendant appeared. Upon confession of the debt judgment ordered to be recorded against the defendant, that he pay the plaintiff Two Pounds, Eighteen Shillings & one penny, and Eleven Shillings and Eightpence of Costs by him sustained.

Execution 3 October, 1789. Returnable in one month.

Debt	£2 18 1½
Costs	0 11 8
Hfx.	£3 9 9½

James Fraser, Curator to the Succession of Samuel Judah, vs. Joseph Mallet.

Walter Roe, attorney for the plaintiff, and the defendant appeared and denied the note as set forth in the plaintiff's declaration—the action continued for eight days.

Francois Billet vs. Mitchel Yack.

The Court, after hearing the parties, ordered Judgment be recorded against the defendant for the Sum of Six pounds, ten Shillings & Sixpence, Currency, and Eleven Shillings and Eightpence Costs by him sustained.

Francois Billet vs. Mitchel Yack, fils.

The parties appeared and after weighing the matter of difference the Court order the plaintiff to finish his work according to agreement, and the defendant to pay the said Francois Billet four pounds and sevenpence halfpenny, currency, and eleven shillings and eightpence of costs.[26]

James Fraser, Curator to the Succession of John Casety, vs. René Cloutier.

Walter Roe, attorney for the plaintiff, and the defendant in person appeared, and after weighing the matter of difference the Court order the defendant to pay the plaintiff the sum of six pounds, six shillings and sixpence halfpenny, currency, and eleven shillings and eightpence costs by him sustained.

James Fraser, as Attorney to the Estate of Thos. Williams & Coy., vs. J. Bte. Rheaume.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the action is continued at the instance of Mr. Roe.

James Fraser, Attorney to the Assignees of Thomas Finchley, vs. Dominique La Brosse.

Walter Roe, attorney for the plaintiff, and the defendant appeared.

The Court, after adjusting the matter of difference, ordered Judgment be recorded against the said Dominique LaBrosse, that he pay unto the said James Fraser the sum of two pounds, eleven shillings and tenpence halfpenny, currency, with eleven shillings and eightpence of costs by him sustained.

Francois Latour vs. Louis Trudell.

The parties appeared and after adjusting the matter of difference Judgment was recorded against the said Louis Trudell, that he pay unto the said Francois Latour ten pounds, currency; (or return to the plaintiff four hundred and fifty pounds of flour) with eleven shillings and eightpence costs by him sustained.[27]

Frederick Arnold vs. J. Bte. Laduc, fils.

The plaintiff appeared by Walter Roe, his attorney, and the defendant being called and appeared. The Court took into consideration

the Report of auditors upon the matter in dispute who were nominated by consent of the parties to report on their difference. Whereupon the Court order Judgment be recorded against the said Jean Bte. Laduc fils, that he pay unto the said Frederick Arnold the Sum of Ten Pounds of the Currency of New York, equal to Six Pounds, Five Shillings, Currency of Quebec, and the sum of ..... costs by him sustained.[28]

Mathew Dolson vs. John Suittor.

The parties appeared and after taking into consideration the difference between them the Court ordered that the said John Suittor pay unto the said Mathew Dolson the sum of nine pounds, eleven shillings and elevenpence, currency, and the sum of ..... costs by him sustained.

Court adjourned to the 10th September.

Province of Quebec. District of Hesse. s.s.

Court of Common Pleas held at L'assomption on Thursday, the 10th day of September, 1789.

Present: The Hon. William Dummer Powell, Esquire, First Judge of said Court.

Jacques Peltier vs. Laurent Maure.

The plaintiff appeared and filed his declaration and the defendant in person acknowledged the debt and agreement for the rent of a house, but that he had lost several articles out of the said house owing to the carpenters making repairs in the said house before his time was expired.

The plaintiff replied that he neither entered nor authorized anyone to enter the said house before the defendant's time was expired.

District of Hesse. s.s.

Be it remembered that on the Tenth day of September, in the year of our Lord one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, Jacques Peltier, of the Parish of St. Anne, and then and there in person declared that the said Laurent Maure was to him justly indebted in the sum of Twenty-Seven Pounds, Sixteen Shillings, Currency of said Province, for the Rent of a House, and the said Laurent Maure, having been summoned to appear to answer the Plaint in the said Declaration set forth, and then and there accordingly did appear and confessed the Debt to be just, but pleaded he had lost several articles out of the said House owing to a certain Jean Bte. Crete, with his men, making repairs in the said House before his time was expired. The said Jacques Peltier replied that he neither entered himself nor authorized any person whatsoever so to do before the Defendant's time was expired, all which being duly considered by the Court, Judgment is recorded against the said Laurent Maure, that he pay unto the said Jacques Peltier the sum of Twenty-Seven Pounds, Sixteen Shillings, Currency, and ..... of costs by him sustained with interest from the Eighth of September, last, instant, until perfect payment, with recourse against the said

J. B. Crete for Damages in his alegation set forth.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, but a letter was received from him setting forth his Plea accompanied with a Certificate, exhibit A, now filed.

Jean Baptiste Petre
vs.
Alexander Harrow.

Charles Smyth, acting by Procuration for the plaintiff, and Walter Roe, Esq., attorney for the defendant, entered appearance.

John Askin
vs.
Antoine Dequindre.

CAUSES UNDER TEN POUNDS STERLING.

Charles Smyth, attorney for the defendant, filed his agreement with the plaintiff and produced Jno. Martin as evidence. The Court allowed the plaintiff eight days to prove his allegations.

Antoine Boullard
vs.
Rich'd Pollard.

The parties appeared and the defendant is ordered to give the plaintiff his account before eight days; and then if the defendant falls in debt to the plaintiff he has a recourse to the Court.

Hyacinth Latourelle
vs.
William Groesbeck.

This cause stands over at the instance of Mr. Roe, the plaintiff's attorney.

Thomas Cox
vs.
Jordan Ivory.

The parties appeared, and on motion of Walter Roe, the plaintiff's attorney, the action is continued for fourteen days for the plaintiff to prove his allegations.

James Fraser, Curator to the Succession of Samuel Judah,
vs.
Joseph Mallet.

James Fraser, Curator to the Succession of Thos. Williams & Company, vs. J. Bte. Rheaume.

Continued on motion of Mr. Roe, the plaintiff's attorney, for further testimony.

James Fraser, Curator to the Succession of Sam'l Judah, vs. Charles Chene.

Walter Roe, attorney for the plaintiff, and the defendant appeared and confessed the debt as set forth in the plaintiff's declaration, after deducting two pounds, sixteen shillings, York.

Province of Quebec. District of Hesse. s.s.

Be it remembered that on the Third of September, in the year of our Lord one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, James Fraser, Curator to the Succession of Samuel Judah, by Walter Roe, his attorney, and then and there declared that the said Charles Chene was justly Indebted to him in the sum of Three Hundred and Twelve Pounds, Ten Shillings, Currency, by two Notes of Hand, and the said Charles Chene being Summoned to appear to answer the Plaint of the said James Fraser in the said Declaration set forth and then and there acknowledged the debt but prayed continuance of the action for Eight days, and on the Tenth of the said month in the same year came the said Charles Chene, before the said Court, and there confessed Judgment for the debt as set forth in the plaintiff's Declaration excepting Two pounds, Sixteen Shillings, York, which he had paid on account, all which being taken into consideration by the Court, Judgment is recorded against the said Charles Chene, that he pay unto the said James Fraser the Sum of Three Hundred and Ten pounds,

Fifteen Shillings, Currency of the said Province, and Nine Pounds, Six Shillings and Sixpence costs by him sustained with Interest from the Tenth of said month of September untill perfect Payment.

Execution issued 25 September, 1789. Returnable 7 January, 1790.

Debt	£310	15	0
Costs	9	6	6
Quebec currency	£320	1	6

James Fraser, Curator to the Succession of Samuel Judah, vs. Charles St. Abeau.

Walter Roe, attorney for the plaintiff, and the defendant appeared. The plaintiff called as evidence John Martin of full age, not interested and duly sworn, deposeth that he saw the defendant, Charles St. Abeau, make his mark as his signature to the Note in question and that the words "Charles St. Abeau," his mark around the cross in the exhibit A filed in this cause is of the handwriting of the deponent.

Signed on the Minutes, JOHN MARTIN.

Prov. Quebec. District of Hesse. s.s.

Be it remembered that on the Third day of September, in the year of our Lord one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, James Fraser, Curator to the succession of Samuel Judah of New York, deceased, by Walter Roe, his Attorney, and then and there declared that the said Charles St. Abeau was justly Indebted in the Sum of

Seventeen Pounds, Seven Shillings and Fourpence, Currency, and the said Charles St. Abeau having been Summoned to appear to answer the Plaint of the said James Fraser in the said Declaration set forth, and there denied the Debt and his Signature to the said note, whereupon eight days was allowed to the Plaintiff to prove his allegations as in his Declaration contained, and on the Tenth of September, in the same month and year came the said James Fraser again by his said attorney, and made proof by the oath of John Martin that the words Charles St. Abeau, his mark around the cross in the said Note is of the proper handwriting of the deponent, and that he was present when the said Charles St. Abeau made his mark to the same as his Signature, the said Charles St. Abeau being thrice called and not appearing, all which being duly considered by the Court, Judgment is recorded against the said Charles St. Abeau that he pay unto the said James Fraser the sum of Seventeen Pounds, Seven Shillings and Fourpence, Currency of said Province, and the sum of ..... costs by him sustained, with Interest from the first of September in the said month untill perfect Payment.

Execution issued 25 September, 1789, and returnable 7 January, 1790.

Debt £17 7 4
Costs .....

Thomas Finchley
vs.
Pierre Chene.

Walter Roe, attorney for the plaintiff, and the defendant appeared. Mr. Roe moved to mend his Declaration, which was granted by permission of the defendant.[29]

Province of Quebec.
District of Hesse.
s.s.

Be it remembered that on the Third day of September, in the year one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, Thomas Finchley, by Walter Roe, his Attorney, and then and there Declared that the said Pierre Chene was justly Indebted by a Note of Hand in the sum of Fifty-Eight pounds, Fourteen Shillings and Sevenpence, Currency of said Province, and the said Pierre Chene having been Summoned to appear to answer the Plaint of the said Thomas Finchley in the said Declaration set forth, and then and there acknowledged the original Debt to be just, but that he had made several payments on account—thereupon Eight days was allowed the plaintiff to make proof of his allegations in his said Declaration contained, and on the Tenth of the said month came the said Thomas Finchley, by his said Attorney, and moved to amend his Declaration, and thereupon by admission of the said Pierre Chene he, the said P. Chene, is condemned to pay unto the said Thomas Finchley the Sum of Forty-Eight Pounds, Eleven Shillings and Fourpence, Currency of said Province, and Eight Pounds, Eight Shillings of Costs by him sustained, with Interest from the first of September on the principal Sum until actual payment.

Jean Baptiste Tourongeau vs. Francois Latour.

Walter Roe, attorney for the plaintiff, and the defendant appeared. The parties agreed to leave the accounts to Arbitrators, and the plaintiff named on his part William Monforton and the defendant Francis Dubois, and in case of difference to call an Umpire, whereupon the Court ordered a Rule that they make their Award in fourteen days.

Richard Dobie, of Montreal, Merchant, vs. John Martin, of Detroit.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the plaintiff called James Urquhart as evidence, and sworn of full age and not interested in this cause, and sayeth that he is acquainted with the handwriting of the defendant, and that the name "John Martin," subscribed to the exhibit A, being the note in question now filed in this cause, is of his proper handwriting.

Signed on the Minutes, JAS. URQUHART.

Prov. Quebec. Dist. Hesse. s.s.

Be it remembered that on the Third day of September, in the year of our Lord one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, Richard Dobie, of Montreal, in the said Province, Merchant, by Walter Roe, his Attorney, and then and there declared that the said John Martin was justly Indebted to him in the sum of Three Hundred and Eighty-Three Pounds, Seven Shillings and Threepence, Currency of said Province, due by balance of a Note of Hand, and the said John Martin, having been summoned to appear

to answer the Plaint of the said Richard Dobie in his said Declaration set forth, and being thrice called and not appearing the Default of the said John Martin was recorded and the eighth day from the said Third of September given to the said Richard Dobie to make proof of the allegations in his said Declaration contained, whereupon on the tenth of September following, in the same year, came the said Richard Dobie, by his said Attorney, and made proof by the oath of James Urquhart, that the name John Martin subscribed to a certain Note of Hand by the said Richard Dobie to the said Court produced, and on which the demand of the said Richard Dobie in his said declaration was grounded, was of the proper Handwriting of the said John Martin, and thereupon the said John Martin, being again thrice called and not appearing, the said Richard prayed that his Second Default might be recorded and that for the profit of such Default obtained he might have Judgment for his said Debt and Costs, all which being duly considered by the Court Judgment is recorded against the said John Martin, that he pay to the said Richard Dobie, the sum of Two Hundred and Seventy-Eight Pounds, Five Shillings of the Currency of said Province of Quebec, with Interest from the date of said Note, the Twenty-first of October, one Thousand Seven Hundred and Eighty-Four, and Eight Pounds, Fifteen Shillings of Costs by him sustained.

Execution issued 25 September, 1789. Returnable 7 January, 1790.

Debt	£278	5	0
Costs	8	15	0
Quebec currency ..	£287	0	0

James Fraser, Attorney by Procuration to Thomas Cox, vs. Pierre LaBute.

Walter Roe, attorney for the plaintiff, and the defendant appeared. The plaintiff, by his said attorney, moved to have the action stand over until the first Court day in November next, as a material witness in this cause is now absent in the Indian Country—and filed two receipts, Ex. A. B.

Charles McCormick vs. Alex'r McKee.

Charles Smyth, attorney for the plaintiff by special procuration, and Walter Roe, attorney for the defendant, filed his plea.

Antoine Jalbert vs. Jonathan Schieffelin.

Charles Smyth, attorney for plaintiff, by special procuration and the defendant appeared in person, and called as evidence in the behalf of the defendant John McGregor, of full age and not interested, and duly sworn and says, "that he does not know anything respecting the matter in question." Likewise called as evidence on the behalf of the defendant Raphael Bellonger, of full age and not interested in this cause, and says: "Que lui ettoit en Compagné avec Antoine Jalbert quand le dite Jalbert avait laisser le Service du Defendeur le dix Septieme du Mai de Mai."

Signed on the Minutes, RAPHAEL BELLONGER.
Sa Mark. T. S., Clk.

Catherine Desriviere Lamoinodiers vs. Her husband, Antoine Dagnis Dequindre.

Walter Roe, attorney for the plaintiff, filed a Renounciation, the defendant being three times called and not appearing. The Court made a Rule that the plaintiff do produce his evidence next Court day at Nine o'clock in the morning.

Meldrum & Park vs. J. B. Crete.

Walter Roe, attorney for the plaintiff, and Charles Smyth, acting by Procuration for the defendant. The plaintiff's attorney moved to mend his Declaration, which the Court granted —entered upon a Trial and the defendant objected against the accounts. Ordered that the parties prove their respective accounts in eight days.

Hugh Heward vs. John Askin.

Walter Roe, attorney for the plaintiff, and Charles Smyth, acting by Procuration for the defendant. After Trial of the Cause Mr. Roe moved for a discontinuance of the Suit, and the Court ordered the same to be discontinued accordingly.

Isaac Dolson vs. Joseph Pernier dite Vadboncoeur.

Walter Roe, attorney for the plaintiff, and the defendant being called and not appearing.

District of Hesse.

Be it remembered that on the Twentieth day of August, in the year of our Lord one Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, Isaac Dolson, of L'assomption, Yeoman, by Walter Roe, his Attorney, and then and there declared "that on the Sixth day of April, in the year of our Lord one Thousand Seven Hundred and Eighty-Six,

for a valuable consideration he purchased from John Askin, of Detroit, Merchant, a certain Tract of Land situate at the Petite Côte on the South side of the River Detroit, containing Three acres in front by Forty in depth, bounded in front by the said River Detroit and in the rear by unlocated lands, on the East North-East by a Farm, the property of the plaintiff, and on the West South-West by John Wilson, To Have and to Hold the said premises with the appurtenances thereunto belonging to him and his said heirs for ever, by virtue whereof the plaintiff, on the Seventh day of April, One Thousand Seven Hundred and Eighty-Six, entered upon the said premises and was possessed thereof; and the plaintiff being so quietly and peaceably possessed thereof, the said defendant afterwards, that is to say, on the seventh day of December, One Thousand Seven Hundred and Eighty-Seven, violently entered into the said premises with the appurtenances the property of the plaintiff as aforesaid, and which he legally held from the said Seventh of April, One Thousand Seven Hundred and Eighty-Six, to the said Seventh of December, One Thousand Seven Hundred and Eighty-Seven, and ejected him out of said Farm, and now forcibly retains possession thereof, together with his Improvements thereon and Farming utensils and other wrongs to the said plaintiff did to his great damage one Thousand Pounds," and the said Joseph Pernier dite Vadboncoeur, having been Summoned to appear to answer the Plaint of the said Isaac Dolson, in the said Declaration

set forth, and then and there acknowledged that the plaintiff was in peaceable and quiet possession of the premises in question and that he did enter on the said premises in the manner and form as set forth in the plaintiff's said declaration, which being duly considered by the Court, it was ordered that the defendant put the plaintiff immediately in full possession of the said premises, and Eight days allowed the said Isaac Dolson to make proof of the allegations in his said Declaration contained, whereupon the Twenty-Seventh day of August, in the said year, came the said Isaac Dolson, by his said Attorney, and the said Joseph Pernier dite Vadboncoeur appeared, and by consent of Parties it was agreed to continue the action for Eight days more. And on the Third of September following, came the said Isaac Dolson, by his said Attorney, and the said Joseph Pernier dite Vadboncoeur being Thrice called and not appearing, and the action continued for Eight days further at the instance of the said Isaac Dolson's attorney. Whereupon on the Tenth of September, in the said year One Thousand Seven Hundred and Eighty-Nine, came the said Isaac Dolson, by his said Attorney, and the defendant being again thrice called and not appearing, all which being duly considered by the Court, Judgment of the re-entry is recorded, and that the said Joseph Pernier dite Vadboncoeur pay unto the said Isaac Dolson, the Sum of Nine Pounds, Seventeen Shillings, Currency of the Province, for Costs by him sustained.

Execution issued 2 October, 1789, and returnable in one month.

Costs £9 17 0

McKillip, Jacobs and Company, of Detroit, Merchants, vs. Claud Solaut, of the same place, Yeoman.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, called on the part of the plaintiffs, George Ironsides, as evidence, of full age and not interested, and duly sworn saith: "That he was present when the defendant made his mark to the exhibit X now filed in Court and knows it to be his proper mark, and that he wrote the body of the said exhibit at the request of the defendant."

Signed on the Minutes, GEO. IRONSIDES.

District of Hesse. s.s.

Be it remembered that on the Twenty-Third of July, in the year of our Lord One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, Messrs. McKillip, Jacobs and Company, of Detroit, Merchants, by Walter Roe, their attorney, and then and there declared "That Claud Solaut, of Detroit, Yeoman, is justly indebted to them on a Balance of Account for Goods, wares and Merchandizes sold and delivered to him, and for monies paid, laid out and expended to and for the use of the said Claud Solaut in a Sum of One Hundred and Seventy-Nine Pounds, Twelve Shillings and Threepence of Lawful money of the Province of Quebec, which Sum although often demanded still remains due." and the

said Claud Solaut having been summoned to appear to answer to the Plaint of the said McKillip, Jacobs and Company, and then and there appeared and denied to owe anything to the said McKillip, Jacobs and Company, and that he only acted for them in the quality of a Clerk, and Twenty-Eight days from the said Twenty-Third of July was allowed to the said McKillip, Jacobs and Company to prove their allegations in their said Declaration contained, and on the Twentieth of August, in the said year, came the said McKillip, Jacobs and Company, by their said Attorney, and filed their Replication that the said Claud Solaut was Indebted in the manner and form as set forth in the said Declaration, and the said Claude Solaut being thrice called and not appearing, the Default of the said Claud Solaut was recorded, and the action continued to the Twenty-Seventh of August, on which day the said Claud Solaut was again thrice called and not appearing, and the said Plaintiff's Attorney moved for further continuance to prove the allegations in their said Declaration contained, whereupon on the Third day of September the said Claud Solaut appeared and by consent of parties the action was continued again until the Tenth of September in the same month, the day agreed and appointed for Trial, and on which day the said Claud Solaut being thrice called and not appearing, and the Plaintiff's Attorney moved to bring forward his Evidence, and George Ironside was duly sworn of full age and not Interested, and declared "that he was present when the said Claud Solaut

made his mark to a certain exhibit X filed in Court and knows it to be his proper mark, and that the Body of the said exhibit was wrote by the said George Ironside by the request of the said Claud Solaut," all which being duly considered by the Court, Judgment is recorded against the said Claud Solaut, that he pay unto the said McKillip, Jacobs and Company, the sum of One Hundred and Seventy-Nine Pounds, Twelve Shillings and Threepence, Currency, with Interest from the Twenty-first of July, last, untill actual payment, and Eleven Pounds, Four Shillings and Sixpence of Costs by them sustained.

Execution issued 25 September, 1789, and returnable 7 January, 1790.

Debt	£179	12	3
Costs	11	4	6
Quebec Currency	£190	16	9

John Urquhart, of Detroit, Gentleman, vs. John Askin, of Detroit, Merchant.

Walter Roe, attorney for the defendant, entered appearance, and Charles Smyth, acting by Procuration for the plaintiff, declined to act any further in his behalf, and the plaintiff therefore was thrice called and not appearing:

Province of Quebec. District of Hesse, s.s.

Be it remembered that on the Twentieth of August, in the year of our Lord One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the said District, John Urquhart, of Detroit, Gentleman, by Charles Smyth, his Attor-

ney by Procuration and then and there declared that John Askin, of Detroit, Merchant, is justly and truly indebted to him in the balance of account for Receiving, Storing and Shipping Twelve Hundred bushels of Corn at Fort Erie in the Sum of Thirteen Pounds, Nine Shillings and Eightpence, Currency, which altho' often demanded still remains due, and the said John Askin having been summoned to appear to answer to the Plaint of the said John Urquhart in the said Declaration set forth, and being thrice called and entered appearance by Walter Roe, his Attorney. On the Twenty-Seventh of August, in the same year, came the defendant, by his said Attorney, and filed his Plea, and the plaintiff's Attorney filed his Replication. On the Third of September following, came the parties, by their respective Attorneys, and on motion of the plaintiff, by his said Attorney, the Trial was fixed in Eight days, whereupon on the Tenth day of September the defendant appeared, by his said Attorney, the day apointed for Trial, and Charles Smyth, acting by Procuration for plaintiff, refused to act any further in his behalf, on which the plaintiff was thrice called to pursue his action and not appearing, all which being duly considered by the Court Judgment is recorded against the said John Urquhart that he pay the sum of ....., Currency, of Costs and the Defendant be dismissed from this Suit.

Jonathan Schieffelin, of Detroit, Gentleman, vs. John Visgar, of Saguinau, Trader.

Walter Roe, attorney for the plaintiff, and the defendant appeared and acknowledged to have received, belonging to the plaintiff, nine barrels, one tierce and two kegs of sugar, the exact weight he does not know, and that the defendant acknowledges it to be the same sugar now seized by the Sheriff. And having raised his Default, for reason why Judgment should not be pronounced against him for the amount of the Goods charged, he says there was a specific agreement between him and the plaintiff that such Goods as he took up for his own use was to be charged at prime cost and expenses, but the Goods received were by him as a Partner traded for the use of the Company, in proof of which he produces John McGregor, of full age and not Interested, who says, "that to the best of his knowledge the defendant was to have Goods for his own use at the Detroit price, and that he does not know the parties having any separate concerns at Saguinau, nor does he know of the Defendant having any Goods of his own but what belonged to the Company, and that the Account produced against the defendant he says is not at the Detroit prices and charges to Saguinau, but charged more, and that he believes there was an agreement between the parties that the defendant should have the Goods for his private use at prime cost and expenses to Saguinau."

Signed JOHN MCGREGOR.

The said John McGregor called again to estimate the value of said sugar, and says he

thinks it worth one Shilling, New York currency, per lb. The action is continued for the Court to consider.

William Groesbeck
vs.
Joseph Gamelin.

The parties appeared, by their respective attorneys, and on motion of Mr. Smyth, the plaintiff's attorney by procuration, the action stands over for eight days for the testimony of William Monforton.

OLD CAUSES UNDER TEN POUNDS STERLING.

Thomas Cox
vs.
Jordan Ivory.

This cause is continued for eight days at the instance of Mr. Roe.

James Fraser, Curator to the Succession of Samuel Judah, of New York, deceased,
vs.
Joseph Malet, of the Parish of St. Anne, Yeoman.

The parties appeared and on motion of Mr. Roe, the plaintiff's attorney, the action is continued for fourteen days for further testimony.

James Fraser, Curator to the Succession of Thomas Williams & Company, of Detroit, Merchant, deceased,
vs.
J. B. Rheaume, of St. Anne, Yeoman.

Continued for eight days for further proof of the delivery of the articles in question stated in the plaintiff's account and declaration.

Court adjourned to the 17th of September, 1789. T. S.

Province of Quebec.
District of Hesse.
s.s.

Court of Common Pleas, Thursday, the 17th day of September, 1789.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court, etc.

Catharine Desriviere LaMoinodiers Dequindre vs. Her husband, Antoine Dagnis Dequindre.

Walter Roe, attorney for the plaintiff, filed his contract of marriage and the defendant appeared. On motion of Mr. Roe (the plaintiff's said attorney) William Monforton was called as evidence, of full age and not interested, and duly sworn, says: "That he saw the plaintiff, Catharine Desriviere Lamoinodiers Dequindre sign her name to the exhibit A, filed in Court the tenth day of September instant."

Signed Wm Monforton, Noty Pub.

Called as evidence, Francois Perthuir, who is produced by Mr. Roe, the plaintiff's attorney, being of full age and not interested, and duly sworn.

Question 1st by Mr. Roe, the plaintiff's attorney: "Si le Temoin connoit Antoine Dagnio Dequindre le defendant dans cette cause?" Answer: "Oui!"

Question 2nd by Mr. Roe: "Si lui connoit les éttat de ces affaire?" Answer: "Que non."

Question 3rd by Mr. Roe: "Avez vous entendu si avoit une Seizèr a chez lui?" Answer: "Que lui avoit entendre dire."

Question 4th by Mr. Roe: "Avez vous entendre dire que ce meubles ettér vendû, et par quil?" Answer: "Que lui avoit entendû dire que l'ont etté vendû a L'Encan."

Question 5th by Mr. Roe: "Si l'ont etté vendû par le Sheriffe?" Answer: "Je ne sai pas."

(Signed) Perthuir.

On motion of Walter Roe, the plaintiff's attorney, William Monforton was called again and Questioned:

Question 1st by Mr. Roe: "Si il connoit le Defendant dans cette cause?" Answer: "Que oui!"

Question 2nd by Mr. Roe: "Si lui a connoisance que il y ait une Seizèr au chez le Defendant?" Answer: "Que il entendû dire."

Question 3rd by Mr. Roe: "Si lui a connoisance qui ces efféts ettè vendû par le Sheriffe?" Answer: "Que lui avoit entendû dire que les effets ettè vendû dans la Cour de Sheriff."

Question 4th by Mr. Roe: "Si il connoit les ettat des affair du defendant?" Answer: "Que il connoit pas possitivement les ettat des son affair, mai quil doit bocoup et pas grand Bien pour satisfaire."

(Signed) Wm. Monforton, Notary Public.

This action stands over to another Court, on motion of Mr. Roe.

Robert Gowie
vs.
Thomas McCrea.

Walter Roe, attorney for the plaintiff, filed declaration, and Charles Smyth, attorney by Procuration for defendant, entered appearance.

Elizabeth Malcolm
vs.
her Husband,
James Donaldson.

The plaintiff filed Declaration and Walter Roe, attorney for the defendant, entered appearance.

George Meldrum and William Park, of Detroit, Merchants and Co-partners in trade, vs. Joseph Barron, of St. Anne.

Walter Roe, attorney for the plaintiff, filed his Declaration and the defendant appeared in person and moved for fifteen days delay on account of his family being in a bad state of health, which the Court granted.

Jean B. Petre, of St, Anne, Yeoman, vs. Capt. Alexander Harrow, of the Naval Dept.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, Mr. Roe moved to bring the action to Trial next Court, and the same was granted.

Jonathan Schieffelin, of Detroit, Gentleman, vs. John Visgar, of Saguinau, Trader.

Walter Roe, attorney for the plaintiff, filed a certificate, which was acknowledged by Mr. Smyth, acting by Procuration for the defendant, as per exhibit Y now filed in Court. The Court will be ready to pronounce Judgment the next Court day.

George Meldrum and William Park, of Detroit, Merchants, vs. J. B. Crete.

Walter Roe, attorney for the plaintiffs, and Charles Smyth, acting by Procuration for the defendant, appeared, and by consent of parties it is ordered that Charles Morran and John Askin, Esquire, do report the value of the wood and timber delivered by the defendant to the plaintiff by virtue of an agreement dated the tenth day of October, in the year one thousand seven hundred and eighty-nine, agreeable to the accounts of delivery (Exhibits H., I.) and that their report on the delivery of the value of such wood be made in eight days.

That John Askin and William Robertson, Esquires, do credit the detailed accounts of articles furnished by the plaintiffs to the defendant for which he is charged by them

in the several exhibits C, D, E, F, H, I, and do report the overcharges above the current prices of that day, if any there be on any of the articles so detailed.

J. B. Tourongeau vs. Francois Latour.

On suggestion of Walter Roe for the plaintiff, the defendant has neglected to file his accounts agreeable to the Rule of the Tenth inst—It is ordered that unless the defendant do comply therewith in three days after notification of this rule, that the arbitrators do proceed *ex parte.*

Signed on the Minutes, W. D. P.

William Robertson vs. Thomas McCrea.

Charles Smyth, acting by Procuration for the plaintiff, filed Declaration and the defendant being thrice called and not appearing. The plaintiff's attorney filed a note of hand and called as evidence in his behalf James McDonell, of full age and not interested, and duly sworn, says: "That he saw the defendant sign his name to the Exhibit A, being a Letter of attorney now filed in Court."

Signed on the Minutes, JAMES MCDONELL.

The Court continued the action for eight days, and if the defendant does not appear then to take off the Default, Judgment will be pronounced against him.

William Groesbeck, of St. Anne, Merchant, vs. Joseph Gamelin, of L'assomption, Trader.

Charles Smyth, acting by Procuration for the plaintiff, and Walter Roe, attorney for the defendant, moved that: inasmuch as no cause is shown on the part of the plaintiff why he

should not proceed to the proof of his demand agreeable to the Rule of the tenth instant, prays the action be dismissed with costs. The adverse party moved for further continuance eight days in order to bring his proof.

Province of Quebec.
District of Hesse s.s.

Be it remembered that on the Twenty-Third of July, in the year of our Lord One Thousand Seven Hundred and Eighty-Nine, came before his Majesty's Court of Common Pleas for the said District, William Groesbeck, of Detroit, Merchant, by Charles Smyth, his Attorney by Procuration, and then and there declared "that the Defendant was justly and truly indebted to him by balance of account for goods, wares and merchandise sold and delivered in the sum of Two Hundred and Thirty-One Pounds, Three Shillings and Sevenpence, money of the late Province of New York, which, altho' often demanded, still refused to pay and satisfy"—And the said Joseph Gamelin of the Parish of L'assomption, Trader, being Summoned to appear to answer the Plaint of the said William Groesbeck in the said Declaration set forth and entered appearance by Walter Roe, his attorney. The action is continued to the Twentieth of August in the same year, on which day the Defendant appeared by his said Attorney, and the Plaintiff, by his said Attorney, moved to continue the action for eight days for further testimony, which was granted by the Court. And on the Twenty-Seventh of August in the same month and year, came the parties before the said Court, by their said Attorneys, and

mutually consented to continue the action again for eight days. On the third of September in the same year, came again the said Parties, by their said Attorneys, and on motion of Charles Smyth, the Plaintiff's Attorney, the Court granted a further delay of eight days. On the Tenth of September in the same year came again the Parties, by their respective Attorneys, and Charles Smyth, the Plaintiff's Attorney, again moved for a further continuance for Eight days for the Testimony of William Monforton, who is a material witness in this cause, and thereupon the Seventeenth day of September in the same month, came the said Parties, by their respective Attorneys, and Charles Smyth, Attorney for the Plaintiff, again moved for further continuance, whereupon the Defendant's Attorney, Walter Roe, moved to the Court that: "Inasmuch as no sufficient cause is shown on the part of the plaintiff why he should not proceed to the proof of his demand agreeable to the Rule of the Tenth instant, prayed the action be dismissed with Costs." All which being duly considered by the Court judgment of nonsuit is recorded against the said William Groesbeck, that he pay the sum of ..... currency of costs accrued in the premises.

Charles McCormick vs. Alex. McKee.

Charles Smyth, acting by Procuration for the plaintiff, and Walter Roe, attorney for the defendant. The plaintiff's attorney moved to mend his Declaration which the defendant's attorney objected, otherwise the non-payment of costs, whereupon it was ordered, on motion

of Mr. Smyth for plaintiff, that the cause be tried in eight days.[81]

CAUSES UNDER TEN POUNDS STERLING.

Geo. Deacons vs. Jacob Bougart.

After hearing the difference of the parties the Court ordered Judgment to be recorded against the said Jacob Bougart, that he pay unto the said Geo. Deacons the Sum of Thirty-Seven Shillings and Fourpence, New York Currency, and Fourteen Shillings and Eightpence, Currency of Quebec, of Costs by him sustained.

Thomas Cox vs. Jordan Ivory.

Walter Roe for the plaintiff, and the defendant appeared, and on motion of the plaintiff the action is continued for fifteen days.

Antoine Boullard vs. Richard Pollard.

The parties appeared and for want of a sufficient proof on the part of the plaintiff the action is dismissed with costs.

André Decaroux vs. Joseph Penout.

After hearing the allegations of the parties the Court ordered judgment be recorded against the said Joseph Penout, that he pay unto the said André Decaroux the sum of ten pounds, twelve shillings, and the sum of..... ..... costs by him sustained, being both of the currency of New York.

£10 12 0, N. Y. Cy, Debt
Costs

Thomas Finchley vs. Joseph Barron.

W. Roe, attorney for the plaintiff, the defendant appeared and after hearing the alle-

gations of the parties, Judgment is recorded against the said Joseph Barron, that he pay the said Thomas Finchley the sum of Eight Pounds, Fourteen Shillings and Fourpence Halfpenny, Currency, and Ten Shillings and Eightpence Costs by him sustained.

Debt	£8	14	4½Hfx.
Costs	0	10	8
	£9	5	0½
Execution	0	1	0
Bailiff	0	4	0

Execution issued 3 October, 1789, and returnable in one month.

James Fraser, Curator to the Succession of Samuel Judah, vs. Jos. Barron.

Walter Roe, attorney for the plaintiff, and the defendant appeared in person. After hearing the allegations and duly weighing the difference, Judgment is recorded against the said Joseph Barron, that he pay unto the said James Fraser the sum of Four Pounds, Eighteen Shillings and Sixpence, Currency, and Ten Shillings and Eightpence of Costs by him sustained.

Debt	£4	18	6 Hfx.
Costs	0	10	8
	£5	9	2
Execution	0	1	0
Bailiff	0	4	0

Execution issued 3 October, 1789, and returnable in one month.

Jean Marie La Bathe
vs.
Joseph Castillion.

The parties appeared and on confession of the debt by the defendant, Judgment is recorded against the said Joseph Castillion, that he pay unto the said Jean Marie LaBathe the sum of Three Pounds, Ten shillings and Twopence, Currency, and Eleven Shillings and Eightpence of Costs by him sustained.

Debt	£3	10	2
Cost	0	11	8
	£4	1	10
Writ	0	1	0
Bailiff	0	4	0

Execution issued and returnable in one month.

John Askin,
Esquire,
vs.
Antoine Dequindre,
of St. Anne.

Charles Smyth, acting by Procuration for the plaintiff, and Walter Roe, attorney for the defendant, moved for continuance of the action, which was granted.

Hyacinth Latourell
vs.
William Groesbeck.

The plaintiff is dismissed from his action and to pay costs of suit.

Antoine Jalbert,
of Detroit,
Labourer,
vs.
Jonathan
Schieffelin, of the
same place, Trader.

Charles Smyth, attorney for the plaintiff, and the defendant appeared in person.

Province of
Quebec.
District of Hesse.
s.s.

Be it remembered that on the Third day of September, in the year of our Lord One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common

Pleas for the said District, Antoine Jalbert, of Detroit, labourer, by Charles Smyth, his attorney by Procuration, and then and there declared: "That Jonathan Schieffelin, of Detroit, Trader, some time in the Autumn of last year when it is customary amongst traders to engage Labourers for the purpose of going into the Indian Country to assist them in their Trade with the Indians, did, by a verbal agreement, engage the said Antoine Jalbert to go with him to Saguinau, an Indian Post, for the purpose aforesaid, and did promise and undertake to pay him, the said Antoine Jalbert, the Sum of Twenty Pounds, Sixteen Shillings and Eightpence, Halifax Currency, and also to furnish him with wholesome meat, drink and Lodgings, provided he, the said Antoine Jalbert, should well and truly serve him, the said Jonathan Schieffelin, from the day of the said agreement until the fifteenth day of May, one Thousand Seven Hundred and Eighty-Nine, when he was to receive his wages as aforesaid and be discharged and set at Liberty from all further service to him, the said Jonathan Schieffelin, in consequence of the said agreement. That the said Antoine Jalbert did, in every respect, perform his duty as a good and faithful servant during the said period, and at the expiration thereof did expect to receive his wages as aforesaid; but the Defendant, without any reasonable cause whatsoever, absolutely refused to pay him the same, and still doth refuse to pay him the said sum of Twenty Pounds, sixteen Shillings and Eightpence, Halifax Currency, so long and justly due."

And the said Jonathan Schieffelin, having been summoned to appear to answer the Plaint of the said Antoine Jalbert, in the said Declaration set forth, and then and there appeared and verbally denied to owe anything to the said Antoine Jalbert, but on the contrary averred that the said Antoine Jalbert owed him Two Hundred and Thirty-One Livres, for which he prayed to become an incidental plaintiff, and filed the said Antoine Jalbert's engagement subscribed by him at Detroit, and offered to bring proof that the said Antoine Jalbert did not perform his engagement, and produces his account, items of which he begged leave to prove. The action continued to the Tenth of the same month, being eight days' delay, on which day the parties again appeared, and the said Jonathan Schieffelin produced as evidence on his part John McGregor, of full age and not interested, and duly sworn, "declared to know nothing of the matter in question." Likewise the said Jonathan Schieffelin called as evidence on his behalf Raphael Bellonger, of full age and not interested, who declares, "that he was in company with the said Antoine Jalbert when he left the service of the said Jonathan Schieffelin, which was the Seventeenth of last May." The action was continued for Eight days further, whereupon, the Seventeenth of the same month of September, in the same year, came again the said Antoine Jalbert, by Charles Smyth, his said Attorney, and also the said Jonathan Schieffelin, the Defendant in this cause, and after the allegations of the Parties being duly considered by

the Court the action is dismissed and the said Antoine Jalbert, plaintiff in this cause, to pay the sum of ....., Currency, of Costs accrued in the premises.

Court adjourned to the 24th of September, 1789. T. S.

Province of Quebec.
District of Hesse.
s.s.

Court of Common Pleas, held at L'assomption, District of Hesse, in the Province of Quebec, this 24th day of September, 1789.

Present: The Honourable William Dummer Powell, Esq., First Judge of said Court, etc.

Angus McIntosh, of Detroit, Merchant,
vs.
Jean Bte. Rheaume, of the same place.

Walter Roe, attorney for the plaintiff, filed his declaration and the defendant being thrice called and not appearing—It is ordered that a default be recorded against him.

Francois Barbeau
vs.
Pierre Durand.

Charles Smyth, acting by Procuration for the plaintiff, filed declaration and exhibits A. B., and the defendant after being thrice called entered appearance.

Catherine Desriviere Lamoinodiers Dequindre
vs.
Her husband, Antoine Dagnis Dequindre.

The defendant being thrice called and not appearing, Walter Roe, the plaintiff's attorney, moved to let the action stand over for eight days, his witnesses not being ready.

William Robertson, of Detroit, Merchant,
vs.
Thomas McCrea.

Charles Smyth, acting by Procuration for the plaintiff, and the defendant being thrice called and not appearing, it is ordered that the Second Default be recorded against him and the eighth day from this date be for trial.

Robert Gowie
vs.
Thomas McCrea.

Charles Smyth, acting by Procuration for the defendant, filed his Plea, denying the debt as set forth in the plaintiff's Declaration and Walter Roe, attorney for the plaintiff, replied verbally that the defendant is indebted to the plaintiff in the sum of two hundred and thirty-nine pounds, eleven shillings currency, in manner and form as set forth in his declaration which he prays may be enquired of by the Court, and the said plaintiff's attorney moved for Trial next Court day being the first of October next, which the Court ordered accordingly.

Isabella Malcolm
vs.
Her husband,
James Donaldson.

The plaintiff says that the defendant detains fifty pounds sterling in his hands sent to her by her friends in Scotland. Mr. Roe, attorney for the defendant filed a Plea and denies to detain any sum of the plaintiff's whatever. The Court ordered a Rule for Trial in eight days and the plaintiff then to bring forward his proof.

Jean Bte. Peter,
of St. Anne,
Yeoman,
vs.
Alexander Harrow.

Walter Roe, attorney for the plaintiff, filed a note of hand and moved for Trial next Court day the First of next October which was granted, and Charles Smyth, attorney by Procuration to the defendant, filed a letter of attorney from the defendant to him.

George Meldrum
and Wm. Park,
of Detroit,
Merchants,
vs.
J. Bte. Crete.

Walter Roe, attorney for the plaintiffs, filed a Report of Auditors respecting the plaintiff's accounts, and the defendant appeared by Charles Smyth, his attorney, and moved for continuance eight days in order to prove a

demand respecting two notes of hand and a batteau lost by the plaintiffs, the property of the defendant.

Jean Baptiste Tourongeau, of Detroit, Yeoman, vs. Francois Latour, of the same place, Yeoman.

Walter Roe, attorney for the plaintiff, and the defendant appeared in person and declared to have no objections to the Report of Auditors now filed in Court by the plaintiff's attorney to which the defendant had before agreed to.

District of Hesse. s.s.

Be it remembered that on the Third day of September, in the year of our Lord One Thousand Seven Hundred and Eighty-Nine, came before His Majesty's Court of Common Pleas for the District of Hesse, Jean Bte. Tourongeau, of Detroit, yeoman, by Walter Roe, his attorney, and then and there declared: "that the Defendant was justly and truly indebted to him in the Sum of One Hundred and Sixty-Two Pounds, Ten Shillings and Fivepence Currency of the Province of Quebec for divers goods, wares and merchandise sold and delivered to him, and for monies paid, laid out and expended to and for the use of the Defendant and likewise for monies had and received by the Defendant, the property of the plaintiff agreeable to account annexed to the Declaration, which the Defendant refuses to pay," and the said François Latour, the defendant, having been summoned to appear to answer the Plaint of the said Jean Bte. Tourongeau in the said Declaration set forth and then and there denyed to owe anything to the plaintiff, that he had settled all accounts

with him, in proof of which he filed an acquittance. On the tenth of said month of September, the Parties again appeared and mutually agreed to leave the accounts to be decided by two arbitrators, and the said Jean Bte. Tourongeau named on his part William Monforton and the said François Latour named on his part François Dubois, and in case of their differing in opinion to call an Umpire and thereupon the Court granted a Rule that the said arbitrators do make their award in fourteen days. On the seventeenth of the said month of September, Walter Roe, attorney for plaintiff, moved to the Court that the said François Latour had not filed his accounts agreeable to the Rule of the Tenth instant. The Court ordered that unless the said François Latour do comply therewith in three days after the notification of this rule, that the arbitrators do proceed *ex parte*. And on the Twenty-Fourth of the said month of September came again the said Walter Roe, attorney for the plaintiff, and filed the award of the Arbitrators and the defendant, François Latour, appeared in person and then and there declared to have no objections to the award now filed in Court, whereupon the Court after duly considering the same, ordered judgment to be recorded against the said Francois Latour, the defendant in this cause, that he pay unto the said Jean Bte. Tourongeau, the plaintiff, the sum of Forty-Seven Pounds, Three Shillings and Elevenpence halfpenny, Currency, with interest thereon computed from the thirtieth day of August last until actual payment

and the sum of thirteen pounds, six shillings and sixpence of costs by him sustained. T. S.

Debt	£47	3	11½
Costs	13	6	6
	£60	10	5½
Execution	0	5	0

T. S.

Charles McCormick vs. Alexander McKee.

Charles Smyth, acting by Procuration, attorney for the plaintiff, moved to have his name discontinued in this suit, and upon which the plaintiff appeared for himself and Walter Roe, attorney for the defendant, moved for continuance until the arrival of Isadore Chene, Simon Girty and Capt. Caldwell, material evidences now absent and necessary for the issue, whereupon the Court granted a rule accordingly.[32]

Isaac Williams vs. Jacques Charron.

Walter Roe, attorney for the plaintiff, and the defendant appeared in person, and by consent of parties the peremptory rule in this cause is extended until next Thursday.

John Askin vs. Antoine Dequindre.

Walter Roe, attorney for the defendant, filed his plea, and Charles Smyth, acting by Procuration for the plaintiff replied verbally that the defendant is indebted in manner and form as set forth in his declaration and prayed judgment, then moved for trial in eight days and the Court granted a rule accordingly.

[The Record of the Court of Common Pleas ends here in this Volume, the remainder of the leaves (reversed) is taken up with the Records of the Court of King's Bench beginning Monday, November 3, 1828. In the following volume after 36 missing pages, the Record continues:]

19 May, 1791.
Geo. McDougall
vs.
Jacques Campeau.

Roe, attorney for plaintiff, filed Declaration. Defendant personally appeared and for Plea says that he expected the plaintiff would wait for payment as he had not wherewithal to satisfy him, especially as his land was mortgaged for the money.

Defendant acknowledged the obligation.

Judgment for the same agreeable to the terms of plaintiff's Declaration, one hundred and fifty-five pounds, sixteen shillings and eightpence, Halifax, with interest from 12th May, 1791. T. S.

Execution issued 9th June, returnable 2nd Court in December next.

Debt	£155	16	8
Cost	9	6	6
Hfx.	£165	3	2

T. S.

Geo. McDougall
vs.
Geo. Lyons.

Roe for plaintiff, filed declaration. Default. T. S.

John Askin
vs.
Ettienne Latour dit Bellard, on the opposition of Daniel McKillip.

Roe for plaintiff, ordered the opposition for Trial in four weeks and that notice be given to the opponent, and that a Subpœna be given

Mr. Roe for Mr. Benac to appear in Court at that time and bring the original deed with him.

Court adjourned to 26th inst. T. S.

COURT OF COMMON PLEAS, holden at L'Assomption the 26th of May, 1791.

Province of Quebec.
District of Hesse.

Present: William Dummer Powell, Esquire, First Judge of said Court.

James Turner
vs.
Wm. Tucker.
CAUSES ABOVE TEN POUNDS.

Parties appeared. Plaintiff non-suited for want of proof. T. S.

James May
vs.
James Fleet.

Roe for plaintiff moved for Trial next Court day. Ordered accordingly; defendant not appearing. T. S.

Jos. Thibeault
vs.
J. B'e. Roucourt.

Mr. Roe, for plaintiff, filed declaration and mortgage. Ex. A. The defendant appeared and acknowledges that he is indebted the sum demanded but for plea says that the mortgage contained in the Deed dated 19 June, 1790, ought not to have any effect. The plaintiff replies that by the first Deed of 30 Oct., 1783, the premises as stated in his declaration are already mortgaged and that such after Deed was only a ratification of the former, and prays judgment. Continued *en deliberé*. T. S.

George Lyons
vs.
Francois Chabert, Esquire.

Roe appeared for plaintiff. James May sworn. That the plaintiff having this day filed the affidavit of James May purporting that the best and only witnesses to prove his demand are without the jurisdiction of this

Court, and being willing to refer the said demand to the decisive oath of the defendant prays that a rule may be personally served on the said Francois Chabut, Esq., requiring him to attend this Court in his proper person on Thursday, the 9th of June next, then he to purge himself by his corporal oath from his said demand, failing whereof it shall be admitted and taken *pro confesso*. The Court ordered accordingly. T. S.[33]

Graham and MacKenzie vs. Louis Campeau.

Roe for plaintiffs called James May and duly sworn, declared that the contents of the affidavit, Ex. A, now filed to be the truth and nothing but the truth. Called by plaintiff as evidence J. B'te. Morran of full age and being duly sworn, and declares as follows: Qu'il est Commis actuelment employe par le Demandeur et que de leur part il fut Dimanche dernier chez Defendeur pour lui demander sa raison pour avoir pas acquitté la demande actuel. Pour reponse le Defendeur a dit au Temoin que ce est bien vrai que lui devoit le vinght trois Ponds pour une Quart de Romme qu'il a eut l'éte passé, mais peut pas faire cette somme, bien qu'il avoit demander en plusier maison.

J. Morin.

Judgment upon Mo. of Plff. for the sum of Twenty three pounds 16/ N. Y. Cy. with costs.

T. S.

Execution issued June. Returnable first Court in January next, 1792.

Debt	£14	17	6
Costs	6	8	2
Prov. Cy.	£21	5	8

T. S.

Mr. Roe, of counsel for plaintiffs, returned writ of fi. fa. issued in this cause, with full satisfaction indorsed, 3rd Nov., 1791.

C. SMYTH, *Clerk*.[34]

Meldrum and Park
vs.
Paul Campeau and wife on the opposition of Mad. Campeau.

Mr. Roe, for plaintiff, upon the non-appearance of opponent admits that the Land in Execution is the same which in the inventory filed by the opponent, exhibit B, is valued as part of the Community of the opponents and Guillaume La Forest, father of the minors in whose behalf the opposition is filed, and thereupon prays Judgment on the opposition. Court order that the Sheriff proceed to the sale of the premises subject to the demand of the minor children of Guillaume La Forest and Janvieve Fovelle dt. Bigras to the amount of two thousand, six hundred thirty-five livres. Upon suggestion by Mr. Roe for plaintiff, that an indefinite number of minor claimants stated in the Sheriff's notification of sale would materially affect the value of the Land, and praying that a further day may be given to the plaintiff to ascertain the ages of the children of the said Janvieve Bigras and Guillaume La Forest.

The Court suspended the above judgment until ye further prayer of the plaintiff. T. S.[35]

George McDougall
vs.
George Lyons.

Roe for plaintiff. Default. Mr. Roe moved for Trial next Court day, and that subpœnas may issue. Ordered accordingly. T. S.

Guillaume St. Bernard
vs.
Jean Roucourt.

The plaintiff appeared by his son, Jos. St. Bernard, whose procuration being informal, the Court admitted the return and filing of Process and gave to the plaintiff until the 9th of June to file his substitution. Defendant entered appearance in person. T. S.[36]

Geo. Lyons
vs.
Parlier Benac.

Mr. Roe for plaintiff. Default. Mr. Roe filed the return of the Rule of 14th April last.

Court adjourned to 9th June, 1791.

T. Smith, *Clerk.*

Province of Quebec.
District of Hesse.

Court of Common Pleas, holden at L'Assomption, 9th June, 1791.

Present: William Dummer Powell, Esq., First Judge of said Court.

CAUSES UNDER TEN POUNDS STERLING

Samuel Edge
vs.
John Vert.

Judgment, defendant to pay four dollars and a half and costs. T. S.

Pierre Branconnier
vs.
dit Bourdon La Breche.

The defendant appears and for plea says that he was farmer upon the farm claimed, and that by convention with his brother he was to be paid for certain labours done upon the farm agreeable to the account filed and submits he should not be put out of possession until the said account is liquidated. The plaintiff to take communication of the account and for trial in 8 days. T. S.

For debt. Continued 8 days for proof. T. S.

Pat. McNiff, Esq.,
vs.
Charles Gabriel and Toussaint Chene.

For debt. Continued 8 days for proof. T. S.

The Same
vs.
The Same

CAUSES ABOVE TEN POUNDS STERLING.

Mr. Roe for plaintiff. Defendant appeared. Defendant for Plea says that it is true, he is indebted a balance on a Note of Hand a sum of £42 9s. 8d, N. Y. currency for payment of which he suggests the plaintiff gave him term for payment until Judgment should be had, him depending with Navarre. Mr. Roe replies that such term was given but it's expired. That the Judgment mentioned is rendered and in conformity thereto Navarre has tendered to the defendant the Debt and Costs awarded against him; but that the defendant not being satisfied with the amount of the judgment refuses to accept of the said offer or to pay the present demand.

That the defendant admits that the said tender was made to him, and so soon as he receives his money that he will pay the said demand. Judgment for said debt, Forty-Two Pounds, nine shillings and eightpence, equal to twenty-six pounds, eleven shillings sevenpence currency of the Province and Costs.

T. S.

Nathan Williams
vs.
Pierre Labute.

Roe for plaintiff. Upon suggestion by plaintiff that the witnesses cannot be had as of this

James May
vs.
James Fleet.

day and that the defendant means to take up his default and go to tryal on Thursday next, a delay is given: Ruled that the tryal in this cause do come on peremptorily on Thursday next.

Geo. Lyons
vs.
Francois Chabert
Esq.

Mr. Roe for plaintiff filed rule. Defendant not appearing.

Judgment: Having seen the declaration, return and entry of default on the non-appearance of the defendant in this cause as well as the account filed by plaintiff together with the affidavit, of James May and the return of service of the rule made on the defendant at the instance of the plaintiff requiring his personal attendance to purge himself by oath of the demand made by plaintiff and the record of his default this day, it is considered that the plaintiff's declaration be taken as confessed by the defendant, and thereupon judgment is entered against him that he pay to the said Geo. Lyons the sum of twenty-six pounds, ten shillings fourpence currency of N. York equal to sixteen pounds, eleven shillings and fivepence currency of Quebec with costs. T. S.

Execution issued 29 June, 1791, returnable first Court in January, 1792.

Debt	£16	11	5
Costs	6	11	2
	£23	2	7
Execution	0	5	0

T. S.

Geo. McDougall vs. Geo. Lyons.

Mr. Roe for plaintiff, returned writ of fi. fa. issued in this cause with full satisfaction indorsed.

Mr. Roe for plaintiff. Defendant appeared. Judgment on confession of the debt by defendant agreeable to the terms of the declaration for the sum of seventy-five pounds currency of Quebec, with costs. T. S.

Execution issued 23rd August, 1791. Returnable first Court in March, 1791.

Debt	£75	0	0
Costs	9	13	6
Execution	0	5	0

C. S.

Geo. Lyons vs. Portier Benac, Esq.

Mr. Roe for plaintiff; defendant not appearing. Cause continued for 8 days (as the declaration and account have been left in the Clerk's office) on motion of Mr. Roe. T. S.

Gabriel Godfroy vs. J. B. Couteur.

Mr. Roe for plaintiff filed Declaration. Defendant appeared and for Plea says that he is not indebted; but the plaintiff replied that he is indebted to him. Filed account, the plaintiff to take communication of the same.

T. S.

Jos. Thibeault vs. J. B. Roucout.

Judgment. Parties present. It is considered that the Defendant pay to the Plaintiff the sum of Fifteen Hundred Livres with Interest from the 30 of October, 1783; but that in case of concurrence with any other Judgment

or Mortgage Creditor upon the premises intended to be charged with the said Debt and Interest by the written exhibit bearing date 19th June, 1790, such interest is to be charged on said premises from the date of the fiat, the 19th of May last. T. S.

Guillaume St. Bernard
vs.
J. Roucout.

Joseph St. Bernard, attorney by procuration for plaintiff, appeared. The defendant appeared in person. It is considered that the defendant pay to the plaintiff the sum of twelve hundred and sixty-five livres fifteen sols, equal to fifty-two pounds fifteen shillings currency of the Province.

Execution issued 23rd June, 1791. Returnable first Court in February, 1792.

Debt	£52	15	0
Costs	0	0	0

T. S.

Court adjourned to 16th inst. T. S.

Province of Quebec.
District of Hesse.
16th June, 1791.

Court of Common Pleas, holden at L'Assomption in the said District, 16th June, 1791.

Present: William Dummer Powell, Esquire, first Judge of said Court.

William Forsyth
vs.
F. D. Belcour.

Default.

Geo. Lyons
vs.
J. B. Riopell.

Roe appeared for plaintiff. Default.

Jacob Dicks
vs.
Jno. Cray and wife.

For Damages. Parties appeared. Defendant pleads not guilty and the issue for Tryal next Court day.

Pierre Branconnier
vs.
Bourdon de La Breche.

Parties appeared. Defendant filed plea. Continued 8 days to give communication thereof to the plaintiff.

Pat. McNiff, Esq.,
vs.
Charles Gab. and Toussaint Chene.

Parties appeared. Plaintiff called A. McCormick and Sworn as witness being questioned on the part of the plaintiff what knowledge he has of the *voie de fait* or Trespass declared to have been committed by the Defendants in the Terms of the Plaintiff's Declaration, says that about the 14th or 15th of February last he saw Charles Chene, one of the Defendants named in the cause, cut down a Picket of the Garden fence upon the Premises occupied by the Plaintiff. That the witness thereupon informed Mr. McNiff came out and enquired of the said Defendant what he meant by cutting down his fence, the said Defendant replyed that he wanted a piece of good oak for a sled bottom and that he would replace the Picket upon which Mr. McNiff said that would never do, but suffered him to take the picket away: That about the 25th of March last Two of the defendants, Gabriel and Toussaint Chene entered the premises with intent to carry off some boards which formed the fence around the Barn, that Mr. McNiff forbid them to carry them off without leave from him, or he should be under the necessity of chastiseing him, to which Toussaint Chene replyed that the Boards were his, not his Father's, and that he would carry them off without the leave of anybody, but did not at that time carry them away, and that the Boards are not now there.

That about the 1st of June last he saw Charles Chene, one of the Defendants, go along the wheat field sweeping the Tops of the Grain with a long Pole, which he said was to destroy the Caterpillars.

That on the 5th June last he saw Gabriel Chene, one of the Defendants, cut and carry off a Basket of Grass from the Head Land of the wheat field, which he said was for a Young Calf, and upon Mr. McNiff enquiring why he did it he replyed that he would cut it if he pleased.

Q. by Court. Did you see the Three Defendants together committing any Trespass upon the premises against the consent and will of the plaintiff? Ans. He did not.

ARTHUR MCCORMICK.

Called by plaintiff, Michael Shannon as witness and duly Sworn. Says, that he is a Hired Servant to the plaintiff, who about the last of March last going to the River La Tranch directed the witness not to suffer anything to be carried off the premises until his return. That about 8 or 9 days after being at work in the field, Mr. McNiff sent for him to prevent the Defendant, Gabriel Chene from carrying off some Boards which they had heaped together and were then carrying them away, that he prevented them from taking anything away until they first obtained leave of his Master. That some of the boards had nails

in them; but to what part of the buildings they belong he does not know.

That some time in June, inst., the witness saw Gabriel Chene, one of the defendants, beating the wheat on the premises with a pole and saying at the same time that it was his own wheat.

Q. by plaintiff. If the witness ever saw the three defendants together to plant Corn on the premises. Answer. No, but that he saw Charles Chene and wife plant Corn in the upper field.

His
Michal X Shannon.
marque.

T. SMITH, *Cl.*

Defendants called as evidence Pierre Barron, and duly sworn.

Q. by defendant. Etté vous present quand le Demandeur a prie possession de notre maison et nous a jetter d'Hors, y etté vous appellé pour Temoiner ce que passerai pour lors, et informé la Cour. Response, oui, je ettait present quand le Demandeur a jitter le Defendeur d'Hors. Que le Temoine il fut avec sa voiture pour charrier les Bûtins de Defendeur, que Mr. McNiff leur a dit il y a pas bissaint de sortir des Buttins qu'il rest ici sans aucune payment, et qu'il a offere le bler du grinnier par trois fois a Mr. Chene et en oûtre quand a le gard des annimaux qu'il pouvez les laïsser la.

Q. by plaintiff. At what time did this happen? Repons. Il peut pas dire exactment les tems mais il y a encore du nege.

Q. by plaintiff. S'il entend l'Englais. Repond Que Non. Comment il s'entend cette Histoire, Repond. Que le Demandeur a parler a qu'il dissait a legard de Buttins en francais, que a legard des annimaux il est expliquer en Englais avec Gabreil Chene qu'il a Interpretter a son Pere. Pierre Barron X His mark.

T. SMITH, *Cl.*

Defendant called as evidence Geo. Lyons and duly sworn, Declares, that upon some proposition from Mr. McNiff he, the witness, accompanied Toussaint Chene, one of the Defendants and was present when Mr. McNiff gave permission to the Defendants to plough and sow such part of the land as he pleased excepting a small piece which he reserved for Turnips or potatoes.

Q. by Court. At what time this was? Answer. That it was about two months ago.

XQ. by plaintiff. If he recollects the conditions on which the plaintiff permitted them to sow. Ans. None but he has stated before, but that Toussaint Chene, one of the Defendants said he could not then go but he would return the next day and would together go and point out the spot to plant.

En deliberé GEO. LYONS.[38]

Parties appeared. Plaintiff filed Declaration. Defendant pleads the general issue.[39]

Pat. McNiff, Esq., vs. Charles, Gabriel and Toussaint Chene.

En Deliberé.

Papers made up & the Court Exhibits A. B. C. filed and Sums and Return.

Parties appeared. Que le Defendant apparû in personne et reconnû de etre en collere il a témararement et Malle apropos tenû de propos injuriuse a l'Honneur du Demandeur qu'il renconnait les avoir pas merittée il de sus sa soumette a la Cour.

Andre Decaraux vs. Philip Bellangy.

Judgment. Defendant pay Costs of Suit.

Issued Execution 26 August, 1791. Returnable in two months.

Debt	£0	0	0
Costs	0	9	5
	£0	9	5
Writ	£0	1	0
Bailiff	0	4	0
		C. S.[40]	

For debt. Continued 8 days.

Andre De Caraux vs. Philip Bellangy. ABOVE TEN POUNDS STERLING.

Plaintiff filed declaration. Roe appeared for defendant.

Plaintiff filed Declaration. Roe appeared for Defendants.

Durand vs. Lipps.

James May
vs.
James Fleet.

Roe for plaintiff. Defendant appeared, and for Plea says that he never took an anchor from Mr. May, the plaintiff. Plaintiff called as witness Robert Freeman, and duly sworn.[41]

Q. by plaintiff. If he has any knowledge of an anchor being removed from Mr. May's yard to the King's Shipyard by a party of Seamen under the direction of the Defendant, James Fleet, and when. Ans. That he has knowledge from conversation among the Seamen that some time in the Spring last an anchor was removed from the Plaintiff's yard to the King's Shipyard, and that George Dunn, a gunner, was one of the party that assisted to remove it.

Q. by the plaintiff. Did you never say to any person or persons that you assisted to remove the anchor. Ans. No, he never did.

His
Robert X Freeman.
mark.

T. Smith, *Cl.*

Plaintiff called as evidence John Miller, and sworn.

Q. by plaintiff. Have you any knowledge and what of any anchor being removed out of J. May's yard to the King's yard, and when? Ansr. That some time last spring he assisted to remove an anchor to the King's shipyard from a house yard in Detroit; whether it was

Mr. May's yard or not he cannot say, and that such yard was joining on one side to Capt. Ford's, and that Mr. Williams, Mate of the "Felicity" commanded a party of six Men, went to the yard and showed them the anchor, and that Mr. Fleet the defendant had no hand in carrying away the anchor, nor was present from the beginning to the end, being employed in another command carrying wood into the yard to make Sheaves for Blocks.

His
John X Miller.
mark.

T. SMITH, *Clk.*

Plaintiff called as evidence Geo. Dunn, and duly Sworn, says that he was one of a party by order of Mr. Williams, Mate of the "Felicity," that went to remove an Anchor from the yard next to Capt. Ford's house to the shipyard and that he was present and saw it removed, and that the Defendant, James Fleet, was not present at any part of the time.

George Dunn.
X
Mark of Geo. Dunn.

T. SMITH, *Cl.*

On motion of plaintiff, this action to stand over en Deliberé. T. S.

Geo. Lyons
vs.
Portier Benac, Esq.

Mr. Roe for plaintiff. Defendant not appearing. Plaintiff admitted to swear to his account agreeable to the Rule of Court served on defendant, and filed 26th May last with the return of the service duly executed. Sworn accordingly. Judgment, the defendant to pay the plaintiff agreeable to said account and terms of the declaration the sum of fifteen pounds, eight shillings and twopence, currency and costs. T. S.

Execution issued 2 July, 1791. Returnable first Court in January, 1792.

Debt	£15	8	2
Costs taxed	8	12	2
	£24	0	4

Cap. ad. issued 4th August, 1791. Returnable in February next. Sub. costs. 5s. T. S.

Gabriel Godfroy
vs.
J. B. Couteur.

Roe for plaintiff. Default. Plaintiff moved for Tryal in 8 days. Ordered accordingly. Court adjourned to 25th inst.

T. Smith, *Clerk*.

Province of Quebec.
District of Hesse.

Court of Common Pleas, holden at L'assomption in the said District this 23rd day of June, 1791,

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

Francois Du Chouquet
vs.
Ronald McDonald.

Roe for plaintiff filed Declaration. Default.

The Court met and received the above Return, but, being a great Holiday, *Fete de Dieu*, adjourned the same to the 30th Inst.

T. SMITH, *Clk.*

JUNE 30, 1791

COURT OF COMMON PLEAS, holden at L'assomption in the said District, 30th June, 1791.

Province of Quebec. District of Hesse.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

CAUSES UNDER TEN POUNDS STERLING.

Settled

Wm. Hands vs. Bapt. Lacelle.

Dismissed with costs.

J. B'te Bauparlant vs. Jos. T. Framblay dit Lionard.

Sworn Jno. Dodemead, a witness duly Subpœnaed to the bargain between the parties. Judgment, the defendant to pay plaintiff the sum of Ten Pounds Eighteen Shillings and Ninepence Halifax Currency, with Costs.

T. S.

Wm. Forsyth vs. Fr. D. Bellcour.

Roe for plaintiff. Default. Continued at instance of plaintiff eight days for proof.

Geo. Lyons vs. J. B'te Riopell.

Sworn Ebenezer Loveless, a witness duly subpœnaed and proved the allegations as set forth in the plaintiff's Declaration and the Defendant's wife acknowledged that she does not know anything of the Plaintiff and that

Jacob Dicks vs. Jno. Cray & Wife.

she was sorry for what she had said and that she was in a passion at the time and did not know what she said, and acknowledged the Plaintiff to be an Honest man. In consideration of the Plaintiff's relinquishing his claim to the damages the Defendants to pay costs. Allowed Witness two shillings and sixpence and Ferriage one shilling and threepence.

T. S.[42]

Pierre Branconnier
vs.
Paul Dugas
dit La Breche.

Mr. Roe for plaintiff. Default. Continued to prove the demand in eight days.

Pat. McNiff
vs.
Charles, Gabriel
and Toussaint
Chene.

For Trespass. Dismissed with costs.

Pat. McNiff
vs.
Charles, Gabriel
and Toussaint
Chene.

For Debt. Dismissed for want of proof.

Andre De Caroux
vs.
Philip Bellangy.

Roe for plaintiff. Default. Judgment. The Defendant to pay the Plaintiff Thirteen Shillings Six and a halfpence currency of Quebec, and costs.

Issued execution 26 August. Returnable in two months.

Debt	£0	13	6½
Costs	0	9	5
	£1	2	11½

Writ	£0	1	0
Bailiff	0	4	0

C. SMITH, *Clk.*

ABOVE TEN POUNDS STERLING.

Pierre Durand
vs.
John Lipps.

Roe for defendant filed exception. Continued the cause for 8 days at the instance of the Court in order to look into the propriety of the defendant's exception.[43]

James May
vs.
James Fleet.

Roe for plaintiff. The defendant not appearing, on motion of plaintiff, the cause is discontinued.

Gabriel Godfroy
vs.
J. Bte. Couteur.

Roe for plaintiff. Default. Continued 8 days on motion of plaintiff.

Frs. Duchoquet
vs.
Ranald McDonell.

Roe for plaintiff. Default. Continued 8 days on motion of plaintiff.

Daniel Bliss, Esq.,
Attorney, etc.,
vs.
Wm. Thorn.

Roe for plaintiff filed Declaration. Default.

Graham & McKenzie,
vs.
Louis Campeau,
on the opposition of Jacques Campeau, of St. Anne, Yeoman.

That the opponent filed a Mortgage bearing date the first day of October, 1790, Hypothecating sundry moveables upon the Farm of the Defendant which the opponent submits not to be subject to the execution of this Court. Ordered by the Court: moveables not being subject of Mortgage, Sheriff is ordered to proceed to the Sale, that the opponent personally exposes to the Court that the cow returned by the Sheriff in the property of the Defendant belongs to him and is ready to verify. Continued 8 days to prove the cow by the opponent, but the cow in the interval to remain in the hands of the Sheriff. T. S.

Court adjourned to 7th July next.

T. SMITH, *Clerk.*

Province of Quebec.
District of Hesse.
7th July, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District on the 7th July, 1791.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

CAUSES UNDER TEN POUNDS STERLING.

Geo. Lyons
vs.
J. B'te Riopell.

Continued for 8 days on motion of plaintiff.

Pierre Branconier
vs.
Paul Dugas, dt. La Breche.

Continued en deliberé.

Pierre Leveré dt. Martin,
vs.
Francois Menard, dt. Montour.

Judgment for—say two pounds, ten shillings Halifax and costs. T. S.

Geo. Leith, surviving partner of late company of Leith & Shepherd,
vs.
J. B'te Laselle.

On motion of Mr. Roe, discontinued.

Geo. Sharp, Esq.,
vs.
J. B. Laselle.

On motion of Mr. Roe, discontinued.

Pierre Gabriel and Toussaint Chene
vs.
Arthur McCormick.

Mr. McNiff by Procuration for defendant, and Mr. Roe for plaintiff, filed declaration.

The defendant for plea say that he is not indebted in manner and form as set forth in the plaintiff's declaration.

The plaintiff replyed that he is indebted in manner and form as set forth, which he is ready to verify. The cause stands over for Tryal on the next adjournment upon motion of plaintiff. T. S.

Wm. Hands
vs.
J. B. Campeau.

Roe for plaintiff filed declaration. The defendant appeared. Judgment on confession of

the debt, Twenty Pounds, Five Shillings and Tenpence Halifax, with interest from 5th April, 1786.

£20. 5/10 Halifax currency.

Issued Execution 28th October, 1791. Returnable first Court day in May 1792.

Debt	£20	5	10
Costs	6	8	2
	£26	14	0
Writ		5	
		C. S.	

Pierre Durand vs. John Lipps.

Plaintiff appeared and filed an answer to defendant's exception. Roe for defendant. Judgment on exception favor defendant. Defendant agreed, on the plaintiff paying Costs up to this period to allow him to amend his Declaration. Amended accordingly, and continued to give communication of the papers to defendant. T. S.

Gabriel Godfroy vs. J. B. Couteur.

Roe for plaintiff. Default. The party who delivered the goods being absent and cannot be had before this Court, the plaintiff moved to have a rule served on the defendant in order he may appear to purge himself upon oath *pro confesso* and ordered accordingly.

T. S.[44]

Fr. Duchoquet vs. Ran'l McDonnell.

Roe for plaintiff, and defendant appeared. That the default in this cause being at first erroneously entered it is now erased. Mr. Roe moved that he could not go to tryal this day

on account of one of his witnesses being absent.

The defendant for Plea pleads the general issue. The Cause for Tryal on the first adjournment. T. S.

Daniel Bliss, Attorney, etc., vs. Wm. Thorn.

Default. This cause continued on motion of plaintiff to next adjournment. T. S.

Graham & McKenzie vs. Louis Campeau, on the opposition of Jacques Campeau.

This opposition is withdrawn by consent of parties and on motion of plaintiffs, the cow in question allowed to opponent.

Court adjourned on account of the harvest to the 4th of August next, 1791.

T. Smith, *Clerk*.

Province of Quebec. District of Hesse.

Court of Common Pleas, holden at L'Assomption in the said District on the 4th day of August, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court.

CAUSES UNDER TEN POUNDS STERLING.

George Lyons vs. J. B'te Riopell.

Settled and the action withdrawn on motion of plaintiff. T. S.

Pierre Branconnier vs. Paul Dugas, dit LaBreche.

The Defendant having filed his account agreeable to the Interlocutary Judgment in this cause, the Court considered that this cause be Dismissed, as to the further demand for possession which this Court is not competent to award upon the present action.

This cause is dismissed—parties having settled.

William Harffy
vs.
Louis Causley.

CAUSES ABOVE TEN POUNDS STERLING.

On motion of Mr. Roe, for plaintiff, the last rule in this cause prolonged to fourteen days.

Pierre Gabriel and Toussaint Chene,
vs.
Arthur McCormick.

On motion of Mr. Roe, discontinued.

D. Bliss, atty. etc.,
vs.
Wm. Thorn.

The plaintiff having given communication of his Account to the defendant only three days ago, the Court order peremptorily that the defendant file his plea in eight days.

Pierre Durand
vs.
John Lipps.

Mr. Roe, for plaintiff, filed Rule and the return of service on the defendant to appear this day. Court order that his appearance be extended eight days on account of the harvest.

Gabriel Godfroy
vs.
J. B. Couteur.

Roe, for plaintiff, called as evidence Robt. Abbott, who was duly sworn, says that about two years since his father, James Abbott, sold to the plaintiff a bay Mare which he bought from Francois Valcour, of St. Anne, and that the defendant, in the month of May, last, being at the Glaize, told the witness that the mare which the witness' father had exchanged with the plaintiff for an ox, he, the defendant, had taken from the Indians as his property.

Frs. Du Chouquet
vs.
Rand. McDonnell

ROBERT ABBOTT.

Plff. filed Subpoena Account Letter.

Plaintiff called as evidence Louis Causley dit Benoit of full age and duly Sworn, and says: "Que environ deux ans il est au service du Demandeur, pendant quelle tems il a soignier la Jimmant que le Demandeur M. Duchoquette avoit acheté de Mr. Abbott, qu'il connoit bien pour avoir demeurer chez Mr. Abbott et y avoir soignier la meme Jimmant. Que l'automne passé le Sauvage ont alevé la dite Jimmat qu'ils sont vendû apres a une sauvages a l'employ de Demandeur de la quelle sauvages la Defendeur McDonell a prier la dite Jimmant de force comme a lui appertenant, comme il a declaré au temoin qu'il lui porta ce printems du commencement de Mai une billet de Mr. Du-Choquet au sujet de la Jimmat. Que dans le meme tems avant de arriver a la Glaise il a veû la meme Jimmat dans la possession de un Sauvage qui declara au temoin qu'il avoit recû de Mr. McDonnell avec un barril du romme pour un autre Chevalle.

"Que le meme soir le Defendeur avec Mr. Ironside son venû trouver le Temoin lui demander pour quoi il a voullû oter la Jimmat au sauvage, ce que le temoin ny a disant qu'il a fait que l'arrettet pour examiner cy ce etté la Jimmat de son Bourgois, et qu'a le demande du Defendeur sy connoissai la Jimmat pour avoir lever et s'il en voullu faire serment, il dit que non, mai qu'il produrai un homme qu'il avoit elever et qu'il soutienderoit par serment cette ettoit la meme Jimmat il avait vendû a Mr. Abbott. Que le Temoin declara que la dite Jimmat valloit environ Quinze Pounds, et

pour louez un chevalle dans la pais sauvage il coutait ordinairement Trois piastre pour trois ou quatre jour de marche, et que le Demandeur lui a donner quatre piastre pour la voyage qu'il fut chez Mr. McDonnell ce printems, et les vivres que consistat en quinze ou vingt livres de farrine, non comprie un Chevalle qu'il lui a fournir pour la voyage."

Allowed subpœna two shillings sixpence, Halifax, for his attendance.

His
LOUIS X CAUSLEY DT. BENOIT.
sa Marque apres lecture fait.
T. SMITH, *Grff.*[45]

Geo. Lyons vs. Etienne Robidoux.

Roe, attorney for plaintiff, filed declaration. Defendant personally appeared. Judgment on confession of the Note for the balance of the same, twenty-eight pounds, Halifax currency.
T. S.

Geo. Lyons vs. Joseph L'Enfant.

Roe, attorney for plaintiff, filed declaration. Default. T. S.

John Askin vs. Etienne Latour, dt. Bellard on the opposition of D. McKillip.

Smyth, for plaintiff. Mr. Roe, for opponent. (This action continued from page 37.) The opponent declares he is not ready for Tryal and filed affidavit to that effect. That his papers respecting this cause are lost and that he is now under the necessity of going to the River Raisin to get Copies of them, but that he will be ready to try the issue in eight days. Ordered peremptorily by the Court. T. S.[46]

George Lyons
vs.
Portier Benac,
Esq.

Mr. Roe, for plaintiff, informs the Court that on the 2nd day of July, last, a writ of Fi.fa. was issued from this Court at the suit of the plaintiff against the Goods and Chattles, Lands and Tenements of the defendant, addressed to the Sheriff of this District, who, in consequence granted his warrant to Jas. Elam, one of his deputies, who, in execution thereof, on the first day of August inst., was violently assaulted and drove off the defendant's premises by the defendant himself in person, as appears by the affidavit of the sd. Jas. Elam, filed in Court marked (A), and the return of the Sheriff on the said writ; wherefore prays the Court to award a writ of Capias ad satisfaciendum to issue against the defendant.

Court order that a capias do issue accordingly. T. S.

Court adjourned to 11 inst.

T. SMITH, *Clk.*[47]

COURT OF COMMON PLEAS holden at L'Assomption in the said District on the 11th day of August, 1791, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

CAUSES ABOVE TEN POUNDS STERLING.

Pierre Durand
vs.
John Lipps.

[The above is the last entry in this Book (p. 70)—it is not in the handwriting of

Charles Smyth. What immediately follows is copied from a foolscap-sized volume, paper-bound, endorséd " Nisi Prius, Western District from Aug. 1791 to 27th October, 1791: Book No. 1"]

Province of Quebec. District of Hesse.

COURT OF COMMON PLEAS holden at L'Assomption in the said District, on the eleventh day of August, 1791, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esqr., first Judge of the said Court.

The Commission appointing Charles Smyth Clerk of the Court was read and the state oaths required by Law administered, as also the oath of office.

Pierre Durand vs. John Lips.

Plaintiff appeared in person. Mr. Roe, of counsel for defendant, appeared and filed plea marked C. Continued for eight days.

Gabriel Godefroy vs. J. B'te Couteur.

Mr. Roe, of counsel for plaintiff, appeared. Defendant in person.

It is ordered, on motion of Mr. Roe, that the rule for administering the *Serment décisoire* to the defendant may be quashed and that a consent rule be entered whereby Francis Chabert, Esqr., in behalf of the defendant, and Mr. James McIntosh, on the part of the plaintiff, liquidate the respective accounts of the parties and report the balance due in fourteen days, and in case of difference

the report to be made on the umpirage of James May, of Detroit, merchant, in three weeks from this date.

Francois Duchouquet vs. R. McDonnel.

Mr. Roe, of counsel for plaintiff, appearing, prays the judgment of the Court, and defendant's attorney by procuration being present, Court considers that the plaintiff do recover from defendant the sum of sixteen pounds, New York Currency, for price of the horse claimed by plaintiff, together with two pounds for the expenses of claim, making together eleven pounds, five shillings, Province currency, unless within fourteen days he returns the horse to the plaintiff in good condition, and shall pay for the detention thereof one shilling and threepence, Province Currency, per day from the date of the writ in this Cause until the Horse be delivered—and Costs of suits. And the Court, for reason of such Judgment, says that "there is not sufficient evidence of the mala mens in defendant to charge him with exemplary damages. Therefore he is adjudged as on a voyé de fait to restore the object of his Trespass and reasonable damage, or at his option to pay the price and Expense of claim."

George Lyons vs. L'Enfant.

On motion of Mr. Roe, attorney for plaintiff, continued for fourteen days.

John Askin vs. Etienne Latour, dit Bellar, on the opposition of Daniel McKillip.

Mr. Roe, of counsel for the opponent, appeared and filed exhibit marked with the letter Y.

Ordered that the plaintiff do take communication and answer in eight days.

Court adjourned to 18th inst.

CHS. SMYTH, *Clerk.*

WM. D. POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 18th day of August, 1791, pursuant to adjournment.

Province of Quebec.
District of Hesse.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

Mr. Roe, of counsel for plaintiff, filed Declaration. Defendant in this cause appeared in person, for plea says that he is not indebted in manner and form as set forth in plaintiff's declaration, and prays judgment of Court; and plaintiff for reply saith he is indebted in manner and form and does so likewise. On motion of Mr. Roe this cause is set down for Trial on next court day.

Meldrum & Park
vs.
Edward Hazel.

Mr. Roe, of counsel for plaintiff, filed declaration. The defendant appears in person and prays the usual time to plead. Ordered; and Cause continued to next adjournment.

Meldrum and Park
vs.
Thos. Smith, Esqr.

Mr. Roe, of counsel for plaintiff, moves the Court that the rule in the cause for trial extended to this day, be further continued for eight days. Ordered accordingly.

Pierre, Gabriel, and Toussaint Chene
vs.
Arthur McCormick.

Durand
vs.
Lips.

Mr. Durand appeared in person. Mr. Roe, of Counsel for defendant. The plaintiff for Replication to the defendant's Plea or answer, saith, that for anything in the said plea contained, his suit ought not to be dismissed for his said damages have not been liquidated or compensated by any judgment of this Court, as by the said Plea is untruly alleged of which the plaintiff prays the Court will enquire and condemn the defendant as before by his said Declaration is prayed.

Continued for eight days.

John Askin
vs.
Latour dit Bellar,
on the opposition
of D. McKillip.

En deliberé. Continued.

Groesbeck
vs.
Visgar.

On motion of Mr. Roe for plaintiff, ordered that the Rule of the 14th of April, last, be made peremptory and that the defendant do file his plea in eight days.

Court adjourned to 25th inst.
W. D. P.

CH. SMYTH, *Cl.*

Province of
Quebec.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 25th day of August, 1791, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

Meldrum
and Park
vs.
Edward Hazel.

The parties being called appearing, Mr. Roe produced as witness to prove his demand as

contained in his Declaration. Alexander McKenzie, of full age and not interested, who being Sworn and Questioned by Mr. Roe, of Counsel for plaintiff, says: That from the 30th of January to the 12th April, 1785, inclusive, he was Clerk to Messrs. M. & Park, Plaintiffs in this Cause, and that the entries in their Books of Account which he has compared with the accounts exhibited were made by him and agree respectively with the said exhibit, the several articles of which were delivered to the Defendant or to his order either by the witness or in his presence.

ALEXANDER MCKENZIE.

Issued fi. fa. for 23 August, 1792. Ret. 1st Court, June, 1793.

Debt	£17 7 10
Costs	6 11 8
	£23 19 6
Writ	5

Interest on £17 7s. 10d. from 11th day of August, 1791. C. SMYTH, *Clk.*

On motion of Mr. Roe, Court considered that Judgment be recorded against the Defendant agreeable to the terms of his Declaration, the sum of Seventeen Pounds, Seven Shillings & tenpence, Halifax Currency, with costs.

The plaintiffs appeared by their attorney Mr. Roe and the defendant in his proper person, and filed his Plea marked B.

Meldrum and Park, vs. Thos. Smith.

Continued for eight days for plaintiff's Replication.

Pierre, Gabriel, and Toussaint Chene
vs.
McCormick.

Continued on motion of Mr. Roe for eight days.

Durant
vs.
Lips.

The plaintiff appeared in person and the defendant by his attorney, Mr. Roe.

Ordered by the Court that the plaintiff be permitted to make proof of the several articles of his account by witnesses and to that end that he do in eight days file the names of the said witnesses with the respective interogatories to be answered by them, and that Subpœnas be accorded him for the appearance of his said witness in fifteen days.

Groesbeck
vs.
Visgar.

Mr. Roe, of counsel for plaintiff, filed Rule marked F, and on representation of defendant that he was served with said rule too late to draw up the account and statements necessary to form his plea. It is ordered by the Court, that he be accorded eight days for that purpose to file his plea.

Lyons, plaintiff,
vs.
L. Enfant.

On motion of Mr. Roe, of counsel for plaintiff, it is ordered that this cause do stand over for fourteen days.

John Askin
vs.
Latour dit Bellar, on opposition of Daniel McKillip.

Continued by the Court en deliberé.

CAUSES UNDER TEN POUNDS STERLING.

Parties appeared. Continued eight days for proof of plaintiff's demand.

Harffy
vs.
Josh. Barron.

Parties not appearing, dismissed.

The same
vs.
Hannah Clark.

No return.

The same
vs.
Pardoe.

Court adjourned to 1st September, 1791.
W. D. P.

CHAS. SMYTH.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 1st day of September, 1791, according to adjournment.

Province of Quebec.
District of Hesse.
1 September, 1791.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

Mr. Roe appeared and filed replication marked C. Defendant appeared in person—continued eight days.

Meldrum and Park
vs.
Thos. Smith.

Mr. Roe, of counsel for plaintiff, moves the Court that this cause be set down for trial on Thursday next. Ordered by the Court accordingly, and that a copy of this Rule be served on defendant or his agent.

P. G. and T. Chene
vs.
Ar. McCormick.

Plaintiff filed Declaration. Mr. Roe appeared for defendant. Continued eight days.

Edward Hazel
vs.
Meldrum and Park.

Durand
vs.
Lips.

The plaintiff appeared in person and filed Exhibit D. Mr. Roe, of counsel for defendant, likewise appeared. Continued for eight days.

Groesbeck
vs.
Visgar.

Mr. Roe for plaintiff. The defendant appears in person, and for answer to the plaintiff's declaration says that he is not in his said quality indebted as set forth therein, that he finds in the books of accounts of his intestate certain entries respecting transactions with the plaintiff which are extracted and contained in the exhibits now filed marked G, H, I, & K, and having no personal interest in the said estate he lays the same before the Court, and prays to be advised in the premises and Mr. Roe, for plaintiff, appeared and filed his Replication to said Plea marked L. Continued eight days. Discontinued on motion of plaintiff.

John Askin
vs.
Étienne LaTour,
dit Bellar,
on the opposition
of Daniel McKillip.

It is considered by the Court that the Sheriff do proceed to the Sale of the premises seized without regard to the opposition. And in conformity to the Ordinance, states as the reason and ground of its judgment, that as the law stands the Judgment of the Court is to be satisfied out of the Lands and Tenements of the debtor, failing his Goods and Chattels. The Judgment, if for more than ten pounds sterling, hypothecates all the real property of the debtor, and only a prior hypothecation can be admitted against it. If such is pretended and is anterior to that which may have grounded the judgment, the validity of it only can be inquired into on the opposition. The

plaintiff's demand is on a bond and special mortgage of two acres stated to be in the possession of the defendant, and surveyed as his property in September, 1788. The bond is before an officer to whose acts authenticity is given by a special Ordinance of April, 1789. There is all appearance of good faith. To the bond is annexed the receipt and acquittance of the former supposed proprietor. Against such an act the opponent files two unauthentic documents, the admission of which cannot cure their insufficiency without the intervention of the Legislature, so that the opponent's claim must rest on that equitable principle of the Law of France, which in favour of the proprietor or Bailleur du fonds, creates a fictitious Mortgage, Hypotheque tacite without the intention of Deeds or Judgments, but this equitable fiction is not intended to do more for the owner than he could do himself, by taking the legal steps to secure the payment of his Bond. Therefore, it follows, he must prove his Title. No fiction can supply that, and when the documents filed show on his part that he had none, none that the King's Courts can acknowledge.

P. G. and Toussaint Chene vs. Pat. McNiff.

Mr. Roe of Counsel for plaintiff, appears and files Declaration and admits the essoin of defendant filed and marked A in lieu of application. Continued eight days.

Geo. McDougall vs. Geo. Lyons.

The Sheriff having returned writ of fi. fa. in this cause, with the opposition of Geo. Leith

annexed, to the sale of certain moveable property seized as belong'g to Defendant.

The said Geo. Leith enters his appearance by Geo. Ironside to support the same filed paper marked A.

Mr. Roe of Counsel for plaintiff, admits the said appearance and paper filed and prays the Judgment of the Court. By the Court it is considered that the Sheriff do proceed to the Sale of the Effects seized without regard to the said opposition, and in compliance with the Ordinance states as Cause and Ground of its Judgment that by Law moveable property cannot be subject to Hypothecation, and that the appostella to the opposition show that there was no sale, but a pretended Mortgage of the Moveable Goods which can operate no legal effect.[48]

UNDER TEN POUNDS STERLING.

Harffy vs. Barron.	Parties not appearing. Cause dismissed.
Wm. Searl vs. Ben. Marsack.	The parties appeared; continued eight days.
Our Sovereign Lord the King, on Information of Wm. Harthorn vs. Wm. Scott.	The parties appeared; continued eight days.
The same vs. Jno. Welch.	The parties appeared; continued eight days.
The same vs. Mat. Dalson.	The parties appeared; continued eight days.
The same vs. Thos. Smith.	The parties appeared; continued eight days.
The same vs. Wm. Hands.	The parties appeared; continued eight days.

The parties appeared; continued eight days. — The same vs. John Wheaton.

The parties appeared; continued eight days. — The same vs. Presque Cotté.

The parties appeared; continued eight days. — The same vs. Fran. Gerardin.

The parties appeared; continued eight days. — The King, on Information of James May vs. Jacques Baby.

The parties appeared; continued eight days. — The same vs. The same.

The parties appeared; continued eight days. — The same vs. Geo. McDougall.

The parties appeared; continued eight days. — The same vs. Fran. Frerot.

Mr. Montigny presents to the Court in behalf of Polier Benac, Esq., a petition marked A and a paper purporting to be an affidavit of the said Polier Benac, taken before Geo. Sharp, Esq., marked B.

The above Exhibit filed by the Court.

Court adjourned to 8th September inst., 1791.

CHARLES SMYTH, *Clerk.*

WM. D. POWELL, *J.C.P.*

Province of Quebec. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 8th day of September, 1791, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court.

Meldrum and Park
vs.
Thos. Smith.

Mr. Roe, for plaintiff. Defendant appeared in person.

On motion of plaintiff's attorney it is ordered that this Cause be set down for Trial on the 29th day of September inst.

Issued subpœna to defendant 24th September. C. S.

Pierre, Gabriel and Toussaint Chene
vs.
Arth. McCormick.

Mr. Roe filed Rule for Trial of this day on suggestion of defendant filed and marked D that he cannot, from illness, attend the trial of this Cause on this day. It is ordered by the Court that it do stand over for trial in fourteen days.

Durand
vs.
Lips.

The parties appeared. The defendant filed paper marked with letter E, and moved the Court that the prayer of the rule in this cause of the 25th August be extended, and that he gave leave to file his Interrogatories in eight days, and that this Cause be set down for Trial on the 22nd inst. Ordered accordingly.

Groesbeck
vs.
Visgar.

On motion of Mr. Roe, it is ordered that the merits of this cause be tried in fourteen days. Issued Subpœna for plaintiff 16th September, 1791. C. S.

Lyons
vs.
L'Enfant.

Continued on motion of Mr. Roe for one month.

Hazel
vs.
Meldrum and Park.

Mr. Roe filed plea marked B. The defendant appears in person, and for Replication to

the defendant's Plea saith they are indebted in manner and form as set forth in his said Declaration, whereof he prays the judgment of the Court.

It is ordered by the Court, on Motion of plaintiff, that this cause be set down for Trial in fourteen days.

Issued subpoenas 9th September for Luke Killan, Jas. Benjamin, Judith Ramsay, and Antoine Beaufar.

Pierre, Gabriel, and Toussaint Chene
vs.
Pat. McNiff.

UNDER TEN POUNDS.

Defendant files Plea to plaintiff's Declaration marked B. Mr. Roe appears for plaintiff.
Cause continued to next adjournment.

Wm Searl
vs.
Marsack.

Dismissed.

The King, on Information of Wm. Harthorn,
vs.
Wm. Scott.

Judgment, that the Defendant be condemned to pay the penalty of five shillings as demanded.

This is an action on a new penal Statute, and by the appearance in Court must have engaged much attention. Altho' by the Ordinance the Jurisdiction given to this Court is Summary and without Appeal, yet being the first determination here on the construction of the Ordinance the Court assigns the Grounds of its Judgment that the public may at least have the benefit of authentic representation to the Legislative authority if judged requisite. By the Ordinance of 1791, Magistrates in Towns are empowered, at the request

of the Inhabitants, to make regulations for the Police, which being published shall have force of Law for six months; the lower penaltys to be recovered by Plaint before one Judge of the Common Pleas as in Causes under £10 sterling without appeal. The objection by the Defendant is that his Cow was not wandering in the Street, but in a lane, so not within the regulation. Penal Statutes are to be construed strictly but not absurdly. Every public thoroughfare in a Town is a Street, the King's highway. This plea admits everything else, but others resisting the legality of the Publication of the regulations, it is requisite that the Court should opine on that objection in their Judgment in this Case, as that would be fatal; the Court has examined the Ordinance and the testimony. The Ordinance requires publication simply without directing the mode as in former Ordinances, therefore, the Court is of opinion, that the affixing the regulations as proved at the usual place, and crying them at the Church door at the issue of Grand Mass on a Sunday is sufficient evidence of notoriety to take away the Plea of Ignorance. Few laws are so well promulgated. The Declaration demands Costs, but none can be given, as the conviction is Summary and the Ordinance gives Costs only on suit for fines exceeding forty shillings.[49]

The same vs. Jno. Welch.

Judgment that the Defendant be condemned to pay the penalty of five shillings.

The same vs. Math. Dalson.

Judgment as above.

Continued by the Court en deliberé.	The same vs. Wm. Hands.
Continued by the Court en deliberé.	The same vs. Jno. Wheaton.
Continued by the Court en deliberé.	The same vs. Presque Cotté.
Continued by the Court en deliberé.	The same vs. Fran. Girardine.
Continued by the Court en deliberé.	The same vs. Thos. Smith.
Judgment that the Plaintiff do recover the Penalty of Twenty shillings as demanded.[50]	The King, on the Information of James May vs. Jacques Baby.
Judgment—dismissed, the defendant not being occupier of the house altho' proprietor.	The same vs. The same.
Judgment—that the plaintiff do recover the penalty of five shillings as demanded.	The same vs. Geo. McDougall.
Judgment—that the plaintiff do recover the penalty of five shillings as demanded.	The same vs. Fran. Frerot.
Parties Plaintiff appeared, filed Sums. Continued fourteen days for proof.	Jno. Baptiste Frederic vs. Louis Vessineau.
Continued to next adjournment.	Bellecour vs. Monforton.
The Sheriff filed Writ of fi. fa. issued in this Cause with the opposition of Andre Decaroux to the Sale of a Boat seized by virtue of the said Writ, and the said opponent appeared and prayed time to prove the allegations of his said opposition. It is ordered by	Geo. McDougall vs. Geo. Lyons, on opposition of André Decaroux.

the Court that the opponent do prove the same in fourteen days.

Mr. Roe for plaintiff.

Issued Subpœna to opponent. Returnable 22 inst. 20th September, 1791. C. S.

Court adjourned to 22nd September, 1791.

W. D. Powell, *J. C. P.*

Province of Quebec. District of Hesse.

Court of Common Pleas, holden at L'Assomption in the said District, on Thursday, the 22nd day of September, 1791, according to adjournment.

Pierre, Gabriel, and Toussaint Chene vs. Arthur McCormick.

Continued by Mr. Roe in the rule for trial unto next adjournment.

Edward Hazel vs. Meldrum and Park.

Plaintiff in person. Mr. Roe for defendant. Plaintiff called as witness in this Cause Luke Kellin of full age and not interested who was sworn to declare the truth.

Q. by plaintiff: Were you ever employed, and when, by Meldrum and Park, or Mr. Park, to go to the plaintiff at the mouth of the River for one hundred cord of wood and a Vessel and her Rigging?

Ansr: That he recollects in the spring of the year, about six years past, he was employed by Mr. Heward as a Seaman at sixpence per day to bring up a Vessel from before the plaintiff's door; that when she arrived at Detroit he applied for his payment and was referred by Mr. Heward to Messrs. Meldrum

and Park, that Mr. Park told him Mr. Heward's engagement was nothing to them, but that they would pay him by the month and not by the day, and sent him back again in the vessel with the Master, one McKay, and another seaman, with Mr. Heward, to take in cord wood from the plaintiff's. That he remembers the quantity from the circumstance of Mr. Hazel's being obliged to borrow eight cords to make up one hundred cords.

Q. by plaintiff: Was the Vessel and Rigging in good order when you received them, and where did you receive the Rigging?

Ansr: That the Vessel, to appearance, was in good condition, and that he received the rigging, which was likewise in good condition, out of the plaintiff's house.

Q. by plaintiff: Where and to whom was the wood delivered?

A.: That a part of it was landed in three tiers upon the bank before Mr. Park's house; that part of the rest, by order of Mr. Meldrum, was landed before Mr. McComb's, and the remainder above Mr. McKee's.

Witness, C. S. his LUKE X KILLAN mark

The plaintiff called as witness James Benjamin, and duly sworn.

Q. by plaintiff: Have you any knowledge that Mr. Park at any time and when, came down to the plaintiff's house to bargain for fire wood, and to have his Vessel taken care

of, and what is your knowledge of the premises?

A.: That he remembers in the fall, about six years ago, Mr. Park came down to the plaintiff's house, and witness heard them talking about firewood, but what bargain they made, if any, he cannot say, except that Mr. Hazel came to the witness to borrow a bottle of rum to give to Mr. Park's people upon closing a bargain, as he said, for one hundred cords of wood, and that in the Spring of the year the plaintiff called the witness at two different times from his work in the field to assist in clearing the ice from Mr. Park's Vessel, and that the same Spring the witness lent to the plaintiff eight cords of wood to make up, as the plaintiff said, the one hundred cords he was to deliver to Mr. Park, and that Mr. McKay, Master of the Vessel, was present and measured the eight cords as for that purpose.

Witness, C. S. His JAMES X BENJAMIN. mark.

Plaintiff called as witness Judith Ramsay, who was duly sworn.

Q. by plaintiff: Have you any knowledge, that at any time and when, Mr. Park contracted with the plaintiff for a quantity of firewood, and also to take care of a Vessel that was froze in the ice before the plaintiff's house, and what knowledge have you?

A.: That about six years ago last fall, she

was at plaintiff's house when Mr. Park came down to bargain for some firewood. What the bargain was she cannot say, but that the plaintiff employed two hired men all the winter to cut wood, that the witness cooked for them, and then understood that one hundred cord was to be delivered to Mr. Park. That she saw Mr. Park go with the plaintiff to the garret of his house to chuze a place to put the rigging of the Vessel in during the winter and that during the winter the plaintiff took care of the said vessel.

Her
Witness, C. S. JUDITH X RAMSAY.
mark.

Plaintiff filed Exhibit C, which was admitted by defendant's attorney.

Mr. Roe, for defendant, filed Exceptions marked D. and Ex. E.

The plaintiff admits the vessel belonging to Messrs. Meldrum and Park, commanded by Mr. McKay, took no other quantity of wood from the plaintiff in the spring of 1785 than the hundred cord referred to in the foregoing testimony.

Mr. Roe called as Evidence in defence, Hugh Heward, of full age and not interested, who was duly sworn to declare the truth.

Q. by defendant: Did you or the firm of Heward and McCaslan, at any time, and when, receive from the plaintiff, any and what quantity of cordwood; in whose vessel and by whom commanded?

A.: That Heward and McCaslin did receive

from the plaintiff, between the months of April and June, 1785, seventy-four Cord of firewood, which was conveyed in Meldrum and Park's vessel, The Friends, commanded by Norman McKay, and that the same was delivered below Mr. McComb's house, the whole agreeable to the Exhibit E filed in court.

Q. by the Court: Did Heward and McCaslan contract with the plaintiff, and when, for the said wood?

A.: That they did contract with the plaintiff some time in the winter of 1784-85 for a quantity of wood specified in exhibit C filed in court.

Q. by the Court: Do you know if Messrs. Meldrum and Park undertook to pay the plaintiff the price of any part of the said wood?

A.: I do not know of any other quantity of wood.

Q. By the Court: To whom did Heward and McCaslan pay freight for the said seventy-four cords of wood?

A.: That Heward and McCaslan did not pay freight nor had any settlement of Accounts until after their affairs were put into the hands of Trustees.

HUGH HEWARD.

Issued subpœna for Benj. Knap and Wm. Lee. C. S.

On Motion of plaintiff cause continued to next adjournment for further proof that the

wood credited to him by Heward and McCaslan was delivered in the fall of the year 1784.

Plaintiff in person, Mr. Roe for defendant. Durand vs. Lips.

Upon representation by plaintiff that three of his witnesses are sick and cannot attend, it is ordered on consent of Mr. Roe, that those who do attend shall be heard without prejudice to the plaintiff's right of examining the other witnesses. Plaintiff filed interrogatories G and called upon Joseph Pouget, who was duly sworn to the said Interrogatories.

Ansr. to first Interrogatory: Repond que oui.

Ans. to second interrogatory: Repond qu'il a connaisance que Mr. Durand a fait cette demande.

Ans. to third interrogatory: Repond que oui.

Ans. to fourth interrogatory: Que oui.

Ans. to fifth interrogatory: qu'il a connaissance que Mr. Urquhart, cinquieme nommé par la Cour à pris les dires des quatres arbitres et comme ils ne trouvoit pas d'accord les emportent chez lui promettant d'en faire un rapport a la Cour.

JOSEPH POUGET.

Plaintiff called upon Mr. Thos. Smith, who was duly sworn to answer to certain Interrogatories filed marked G.

Ans. to first interrogatory: That he has no

knowledge that the defendant returned the Land in question, but recollects that the defendant told him that he was going to the *Pittites Ecores,* that he would or could not live upon the plaintiff's land, the plaintiff not having fulfilled his engagement, and that as to the ten bushels of wheat, the plaintiff did offer them to defendant who refused sowing because the land was not fenced, and that this happened about a month before Lips instituted his action against the present plaintiff.

Continued on Motion of plaintiff to next adjournment.

T. SMITH.

Wm. Groesbeck
vs.
Jacob Visgar.

Mr. Roe for plaintiff. Defendant in person. Mr. Roe filed Exhibit M. Mr. Roe called upon John Burrel as evidence in this cause, who was duly sworn to declare the truth.

Q. by plaintiff: Is the Exhibit M, now shown you, of your handwriting, and from whence were the contents extracted?

Ansr.: It is of my handwriting—extracted from the Books of Account of Wm. Groesbeck, the plaintiff.

Ques. by the plaintiff: Are all the items in the said exhibit contained in the said Books of Account, and do they correspond truly in the several extensions of dates and sums?

Ansr.: Yes, they are all truly extracted from the plaintiff's Day Book, except certain Items against which no name is inserted in the margin, which were extracted from the Ledger from entries in the handwriting of Edward Crofton.

Q. by the plaintiff: Do you know William Groesbeck, Jacob Harsen, Garret Teller, Edward Crofton, John Visgar, Garret Graverat, and Thos. Dugan, and have you seen them write respectively, and are the items, in the said Exhibit set against the names of those persons severally entered in the Books of Account in the proper hand writing of the said persons respectively?

Ansr. That he knows them all and has seen them write, and that the items in the said exhibit set against their respective names are in the proper handwriting of the said persons in the said Books of Account, respectively.

Q. by plaintiff: Are the several Items in the said Exhibit placed against your name entered by you in the said Books and were the articles respectively by you delivered to the said Garret Teller, or to his son?

Ansr. That the major part of the said Items were not by him delivered, but charged by order of Wm. Groesbeck or delivered by himself.

Q. By the Court: Were you at any time, and when, Clerk to the plaintiff?

Ansr.: I am now, and have been at different periods since the year 1786, Clerk to the plaintiff.

Q. By the Court: Was you in the habit of making entries in the plaintiff's books against other persons, without seeing the Goods delivered?

Ansr.: Yes.

Q. By the Court: Do you know, if any, and which of the persons whose names are

inserted in the margin of the said Exhibit, at present within the Jurisdiction of this Court?

Ansr.: John Visgar, Thomas Duggan and Jacob Harsen are within the Jurisdiction of this Court, but Garret Graverat is deceased, and Crofton has been about two years absent from the District.

Q. by plaintiff: Is the subscription to the several Exhibits from Nos. 1 to 66, inclusive, filed by the plaintiff, and now shown to you, of the proper handwriting of the deceased Garret Teller?

A.: Yes.

Q. by plaintiff: Is the Exhibit now shown to you filed and marked No. 69 in the proper handwriting of Ch. Gerardine, and was the contents thereof paid by you to him?

A. That Mr. Gerardine wrote the same in his presence, and that he paid the contents by order of the plaintiff.

Q. by plaintiff: Are you acquainted with handwriting of Wm. Park, one of the firm of Meldrum and Park, and is the signature to the exhibit now shown to you filed and marked No. 70 in the handwriting of the said Wm. Park?

A.: He is acquainted with the handwriting of Wm. Park from having seen him write, and that he believes the said signature is in his handwriting.

Jno. Burrel.

Plaintiff called as Witness in this Court Hugh Heward, of full age not interested, who was duly sworn to declare the truth.

Q. by plaintiff: Are the Exhibits, Nos. 67 and 68, filed in court, and now shown to you, in the handwriting of John McCaslan, your late partner, and were the respective sums of £136 7s. 1d. and £9 12s., received by the firm of Heward and McCaslan from the plaintiff on account of the defendant and wherefore?

Ansr: That the said exhibits are in the handwriting of his late partner, and that the said sums were received to the use of Heward and McCaslan from the plaintiff at the request of Garret Teller.

Q. by plaintiff: Was the plaintiff in the habit of Equiping the said Garret Teller at the period the said sums were received, and if so, was it not then customary for the Equiper to satisfy the debts of the Equiped without any written order?

Ansr: I believe he was in the habit of Equiping the said G. Teller, and it was *then* the general custom to pay the Debts of the Equiped by verbal order.

HUGH HEWARD.

Plaintiff called as witness Jacob Harson, who was duly sworn to declare the truth.

Q. by plaintiff: Were the Items in the Exhibit M, now shewn to you and placed against your name in the margin, severally by you entered in the plaintiff's Books of Account, and what knowledge have you of the delivery of the said articles to the said Garret Teller? or to his use?

Ansr.: That the several entries were by him made in the plaintiff's Books of Account, and that he saw the articles delivered, excepting those of 3rd November and 21st of December, 1784, and three Items of June the 3rd, 1785, and likewise an Item of 16th September, 1784, for Cash which he knows was paid by plaintiff altho' he did not see it paid.

Q. by plaintiff: Have you any knowledge of the sale of a tract of land situated at the River a la Trenche by the plaintiff to G. Teller, and what?

Ansr.: That he has not other knowledge of such sale, except from hearing Mr. Teller say he had bought the plaintiff's share of Lands at the River a la Trench for five hundred Pounds, and that the new suit of clothes he then had on were given him by plaintiff to bind the bargain.

The Witness being unable to write from an illness in his right arm has made his mark.

C. S. His
JACOB X HARSEN.
mark.

Plaintiff called as Evidence Thomas McCrea, who was duly sworn to declare the truth.

Q. by plaintiff: Did you, on the 4th of August, 1783, receive from the plaintiff any, and what sum of money, on account of Garret Teller, and by whose order did you receive the same?

Ans.: That sometime in the year 1783 he presented his account to Garret Teller, amounting to the sum of £52 14s. 2d., New

York Currency. That afterwards the plaintiff desired him to charge the said amount to him, which he did and recd. the same on the 4th of August, 1783.

Q. by plaintiff: Have you any, and what knowledge respecting the sale of a Tract of Land at the River a la Trenche by the plaintiff to the said Garret Teller, and at what period?

Ansr.: He has not, but that he heard the plaintiff and the deceased Garret Teller conversing about an exchange of Teller's share of the land at Groce Point and the River Sinclair for the plaintiff's share of land on the River à la Trenche, and that he afterwards heard John McIntire, their servant, complain that Teller had made a bad bargain in exchanging good Land for bad.

THOS. MCCRAE.

Plaintiff called Jean Baptiste Petré and sworn.

Q. by plaintiff: Did you at any time, and when, work at Teller's house as a joiner?

Ansr.: Yes. Some time in the year 1782 or 1783, for which Mr. Groesbeck paid him £4, New York currency.

His

Witness C. S. JEAN BAPTISTE X PETRE.

mark.

Plaintiff called as Witness Jean Baptiste Couteur, Senr. of full age and not interested, who was duly sworn to declare the truth.

Ques. by plaintiff: Avez vous connaissance d'avoir vendû et quand, une Maison a Mons. Teller? pour quelle Somme, et de qui avez vous reçu le payement?

Reponse: Il y a sept ou huit ans qu'il a vendu à Monsr. Groesbeck une Maison et emplacement a la Côte des Pons pour deux Cents Ponds qu'il à recu de Monsr. Groesbeck, mais qu'il passa le Titre à Mons. Teller.

sa

Witness C. S. JEAN BAPTISTE X COUTEUR.

marque.

Continued on motion of Mr. Roe to next adjournment.

Pierre, Gabriel, and Toussaint Chene
vs.
Pat. McNiff.

Continued on motion of plaintiff.[51]

McDougall
vs.
Lyons, on the opposition of Andre Decaroux.

Mr. Roe, for plaintiff. Opponent appeared in person.

The opponent called as Witness to support his opposition François Raçet, of full age, and not interested, who was sworn to declare the truth concerning the knowledge he has of an agreement between the defendant and André Decaroux, respecting the building of a boat.

Declares: Qu'il étoit temoin d'un arrangement entre Geo. Lyons et Decaroux, pour la construction d'une Batteau, quand Mr. Lyons c'est obligé de fournir tous les Matteriaux et un homme pour l'aidé avec des vivres pour l'homme, pour Decaroux et sa femme pendant

qu'il travillerois et de lui payer par desus vingt ponds quand l'overage serait fait.

Witness C. S. sa François X Raçet. marque.

Continued on Motion of opponent for further proof.

Issued Subpœna to opponent 22nd. Returnable 29th September. C. S.

CAUSES UNDER TEN POUNDS.

Dismissed. Charles Beaubin vs. James May.

Continued the next Court day. Frederick vs. Vessinau.

Continued to next Court day. Bellecour vs. Monforton.

This cause dismissed upon deliberation for want of proof, the ordinance requiring the Conviction to be summary, and it being against reason that a Defaulter on a Penal Statute should be held over to second appearance for a trifling fine by the mere neglect of the informer to make out his case on the first summons. The King, on Information of Wm. Harthorn, vs. Wm. Hands.

Dismissed. The same vs. Jno. Wheaton.

Dismissed. The same vs. Presque Cotté.

Dismissed. The same vs. Francois Gerardin.

The same vs. Thomas Smith.

Dismissed.

Court adjourned to 29th September, 1791.

CHAS. SMYTH, *Clerk.*
WM. D. POWELL, *J.C.P.*

Province of Quebec. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the 29th day of September, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge of the said Court.

Edward Hazel vs. Meldrum & Park.

The plaintiff in person. Mr. Roe for defendant. The plaintiff called as witness in this cause Wm. Lee, of full age and not interested, who was duly sworn to declare the truth.

Q. by plaintiff: Have you any knowledge of a quantity of cordwood furnished by plaintiff and loaded in Mr. Heward's vessel, commanded by Mr. McKay, if so declare when, and the number of Cords to the best of your recollection?

Ansr.: That about seven years ago this fall he was employed by Edward Hazel to draw to the water-side a quantity of Cordwood, cut by the witness and Benj. Knap upon Captain Bird's lot—that he is certain that the Vessel which took it away was loaded four times, and he believes a fifth time; that to the best of his knowledge and belief the vessel carried ten Cords at each loading; that he has knowl-

edge that the said wood was delivered upon account of Mr. Heward, as he was part of the time upon the spot to receive it and even bought some from the witness; that he has also knowledge that in the same fall the same Vessel was several times loaded by the plaintiff with wood cut by himself; cannot say how often, but to the best of his belief it was at least three or four times, and that Mr. Heward himself came down for the wood.

Q. by plaintiff: Do you know if the plaintiff took care of the vessel during the winter whilst she was frozen up on the ice?

Ansr.: That he knows the plaintiff took care of the Vessel from having frequently assisted him to drive away the ice.

Q. by plaintiff: Have you any knowledge that the plaintiff delivered any quantity of Cordwood to Mr. Park in the following spring, and the number of Cords?

Ansr.: That the witness with three others were employed by the plaintiff to cut cordwood for the spring; that he knows one hundred Cords were put on board the vessel in the spring; that he does not know on whose account the wood was delivered, but always understood that it was for Mr. Park, as Callagan, one of the boatmen, told him so, and the witness himself saw Mr. Park at the plaintiff's in the winter, when he was bargaining for firewood as the witness was told by the plaintiff at that time.

Cross-Questioned by Mr. Roe: Do you recollect that Mr. Park's people cut any wood near Mr. Hazel's that fall?

Ansr.: Yes, that Mr. McKay and some others cut a quantity of wood on the Isle of *Boisblanc* that fall.

Q. by defendant: Do you know how the wood, cut by Mr. Park's people, was carried away?

Ansr.: In the same Vessel.

Q. by defendant: Was such conveyance before or after the wood carried from the plaintiffs?

Ans.: That they took away the wood from Mr. Hazel's whilst there was any there, but McKay, the master of the vessel, finding there was not wood to load went to the Island to get a load, and urged the witness and Knap to go down to the Island to help; that they went and cut six cords in two days, that the vessel was loaded, went to Detroit twice to his knowledge, and then returned to the plaintiffs, where the Vessel was froze up.

Witness C. S. his WILLIAM X LEE. mark.

On prayer of witness Court taxes his allowance at 2s. 6d., Halifax, per day for two days. C. S.

The plaintiff calls as Witness Benj. Knap, of full age and not interested, who was sworn to declare the truth.

Q. by plaintiff: Do you recollect, or have you any knowledge, of a quantity of cordwood furnished by plaintiff to Mr. Heward in the vessel commanded by Mr. McKay? If so,

declare the quantity and when it was delivered to the best of your knowledge.

Ansr.: That he helpt to cut, cart and split wood for the plaintiff about six or seven years ago in the fall; that the wood was received by one McKay, in a small vessel; that he does not know the exact quantity, but that the vessel was loaded different times, he thinks more than twice; that the plaintiff's team being worn out, the witness, with Wm. Lee, went to the Island of *Boisblanc* for two days to cut wood and load the vessel.

Q. by plaintiff: Have you any knowledge that the plaintiff furnished any, and what quantity, of firewood to Mr. Park in the spring following?

Ansr.: That he has no knowledge other than that the plaintiff told him in the winter that he had contracted to cut a hundred cords, but did not say for whom; that in the spring the plaintiff told him that he had finished his complement and the witness saw McKay's Vessel loading in the spring at Mr. Hazel's.

BENJAMIN KNAP.

On prayer of witness Court taxes his allowance at 2s. and 6d. p. day for four days. C. S.

The plaintiff called as witness Antoine Beauford, who was sworn to declare the truth.

Ques. by plaintiff: Avez vous connoissance d'avoir mené Mr. Park de chez vous, jusqu'à chez le demandeur a fin de l'engagé à soinge une battiment au defend'r qui étoit pris dans les glaces aupres de chez Mr. Hazel, et quand ce la s'est arrive?

Ans.: Que vers les faites de Noel il y a six ans à ce qu'il croire, Mons. Park l'engagé de l'amener chez Mons. Hazel pour faire un arrangement avec lui pour soingé son battiment pendant l'ever, qu'arrivant chez Hazel il lui a dit ce la et la dissus Mons. Park et Hazel ont visiter a deux repris le Battiment qu'été pris dans la glace et ils ont monter ensemble dans la griner de Mons. Hazel, mais quelles ont été leur convention il ne pourra dire mais qu'ayant representé a Mons. Park qu'il fallû se depecher pour se rendre, il repondit qu'il avait fait un affair et apres avoir bû avec. Mons. Hazel il s'en retournè.

sa
Witness C. S. ANTOINE X BEAUFARD.
marque.

The plaintiff represents to the Court that he has closed his proof and prays the Judgment of the Court thereupon.

Continued by the Court en deliberé.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe for plaintiff. Mr. Smith in person.

That upon the suggestion of Mr. Smith the defendant and intervening plaintiff that he cannot obtain the attendance of all his witness, two being about to leave the place and others being absent. It is Ruled by consent, that such witnesses as are about to leave the place, may be examined on Interrogatories on Thursday next, and that the cause be set down for Trial in three weeks. C. S.

Gabriel, Pierre, and Toussaint Chene vs. Art. McCormick.

Mr. Roe for plaintiff. On Motion by Mr. Roe this Cause is set down for trial on Thursday next, upon due proof of Notice to the Defendant, who does not appear.

Issued subpœna to plaintiff's attorney 4th October, 1791. C. S.

Pierre, Gabriel, and Toussaint Chene vs. Pat. McNiff.

Mr. Roe for plaintiff filed Replication marked C. Defendant does not appear.

On Motion by Mr. Roe this Cause is set down for Trial on Thursday next, upon due service of notice on defendant.

Issued subpœna to plaintiffs 4th October, 1791. C. S.

Pierre Durand vs. John Lips.

Plaintiff appears in person. Mr. Roe for defendant. The plaintiff produced Mr. Ant. Beaufard, of full age and not interested, who was sworn to answer to certain interrogatories filed last court day, marked G.

Ans. to first interrogatory: Oui l'année passé quelque jour devant la St. Michel.

Ans. to second interrogatory: Oui.

Ans. to third interrogatory: Oui.

Ans. to fourth interrogatory: Non. Mr. Durand l'a fait par ordre des arbitres—outrement la graine auroit était à la bris des animaux ce qu'ils na pas étoit.

Witness C. S.

His
ANTOINE X BEAUFARD.
mark.

McDougall
vs.
Lyons, on the opposition of André Decaroux.

Continued on Motion of plaintiff for three days.

Mr. Roe for plaintiff. The opponent in person.

Court orders that the Sheriff proceed to the Sale of the Boat seized as the property of the Defendant in satisfaction of the plaintiff's Judgment, subject to the payment of twenty-five pounds, eighteen shillings and sixpence, New York currency, for labour and materials expended on the said boat, by the opponent, he filing in the office the certificate of Geo. Lyons, sworn before a Justice of the Peace, stating the items of the balance due to the builder, which sworn Certificate is admitted by consent of parties. Costs of the opposition to be paid to the opponent out of the proceeds of the Estate.

Groesbeck
vs.
Visgar.

The defendant attended in person, and on consent of Mr. Roe, cause was continued for trial on next court day.

CAUSES UNDER TEN POUNDS.

J. Bapt. Frederick
vs.
Louis Vessenau.

Plaintiff in person. Cause continued eight days. Court allows witness ten shillings, Halifax.

JOHN MCCLEAN.

Bellecour
vs
Monforton.

Continued for eight days.

Harffy
vs.
Hugh Holmes.

Parties not appearing; dismissed.

Parties not appearing, cause dismissed.

Harffy
vs.
J. B. Labadie,
dit Belleschamp.

Judgment for plaintiff for the sum of eight shillings and sixpence, Halifax, in terms of the Declaration.

Thos. Smith
vs.
André Decaroux.

No return; dismissed.

John Smith
vs.
André Decaroux.

Parties appearing, Cause continued eight days.

Wm. Searl
vs.
Pierre Cardinal.

Court adjourned to 6th October, 1791.

CHAS. SMYTH, *Clerk.*

W. D. POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the sixth day of October, 1791, pursuant to adjournment.

Province of Quebec
District of Hesse.

Present: The Honourable William Dummer Powell, Esq., first judge of said Court.

Plaintiff appeared in person. Mr. Roe for defendant. Plaintiff produced as witness Francois Revaux dit La Jeuness, who was duly sworn to certain Interrogatories already filed marked A.

Pierre Durand
vs.
John Lips.

Ans. to first interrogatory: Oui apres la Recolte de l'année passé.

Ans. to second interrogatory: Ils appertient a Madam Laforest.

Ans. to third interrogatory: Il a connaissance d'avoir vû des touts des perches dan le

feu de Mons. Lips mais il ne sait a qu'ils appertient.

Ans. to fourth interrogatory: Non: il n'a point de connoissance.

Witness C. S

Sa

FRANCOIS X REVAUX DIT LA JEUNESS.

marque.

Continued on Motion of plaintiff to next court day.

Groesbeck
vs.
Visgar.

Mr. Roe for plaintiff. Defendant in person. Defendant files four exhibits marked with the letters N, O, P, and Q, and on motion of Mr. Roe the cause was continued to next adjournment for communication of the first exhibit.

Edward Hazel
vs.
Meldrum & Park.

Mr. Hazel in person. Mr. Roe for defendant. The plaintiff files two papers marked with the letters F and G, and moves the Court for Judgment. Continued by the Court en deliberé.

Pierre, Gabriel, and Toussaint Chene
vs.
Arth. McCormick.

Mr. Roe for plaintiff appears and files notice of Trial as ruled last court day marked P. Defendant in person appears.

The defendant exposes to the Court and for answer to the plaintiff's demand submits that his agent, Geo. Lyons, did receive from the plaintiffs thirty-one pounds, eleven shillings and sixpence towards the payment of one-half of the purchase of a lease bought at auction by the defendant at the plaintiff's request, upon agreement that on payment of such

moiety the plaintiff should enjoy one-half interest in the said lease, but they failing to pay in such entire moiety, the defendant was kept out of the enjoyment his said purchase, from the 8th day of August, 1790, to the 25th of January, 1791, during which periods the plaintiffs enjoyed the said Lease in toto, for which the defendant considered that the said sum of £31 7s. 6d. was not more than sufficient compensation, of which he prays Judgment, and that he may be dismissed from this Action with Costs. And the plaintiffs, by their attorney, for Replication to the defendant's Plea says that during the period stated in the said Plea the said premises were in the power of the Sheriff of this District, to whom the plaintiffs were accountable, and further that such possession was at the repeated request of the defendant, whereof he prays judgment. The defendant files Exhibit F.

Judgment for plaintiff for the sum of nineteen pounds, twelve shillings and twopence, lawful money of the Province, with costs.

Issued execution 28th October, 1791, set first Court in May, 1792.

Debt	£19	12	2
Costs	7	4	3
	£28	16	10
Writ	0	5	0
		C.	S.[52]

Pierre, Gabriel, and Toussaint Chene vs. Pat. McNiff.

Mr. Roe appears for plaintiffs. Defendant appears in his proper person. The plaintiffs file Subpœna issued in this Cause marked D,

and produced Geo. Lyons as Witness, who was duly sworn to declare the truth.

Q. by plaintiffs: Have you knowledge that at any time, and when, Mr. McCormick, as stated in the Declaration, gave the plaintiff permission to sow the farm now in possession of the defendant?

Ansr.: That he the witness conversed with Mr. McCormick respecting the plaintiffs' sowing the land in question before the seed was put into the ground; that Mr. McCormick seemed to have no objection, but has no further knowledge of any express permission by Mr. McCormick before the seed was sown, other than his declaring himself satisfied that it should be done; that the plaintiffs might be able to pay for the Land as soon as possible.

Q. by plaintiffs: Were you present at any time, and when, at a conversation between Arthur McCormick and Toussaint Chene, one of the plaintiffs, and if so what was the tenor or purport of such conversation—declare.

Ansr.: That he was present after the sale of the Farm by the Sheriff, but at what period he does not exactly recollect, with Mr. McCormick, and the three plaintiffs, when the former asked the latter how much wheat they had sown upon the farm, to which they replied that they had sowed twenty-five bushels of fall wheat and intended to sow thirty bushels of spring wheat, upon which Mr. McCormick observed that he was well pleased, as that would enable them to make up his money.

Q. by plaintiffs: Do you know how much

wheat was sown by the plaintiffs last fall upon the farm in question?

Ansr.: That he knows only from their own report that they had sowed twenty-five bushels.

Cross-questioned by defendant: Do you know, that at the time Mr. McCormick gave the permission as you suggest, if it was intended for the benefit of Charles Chêne and his wife and their minor children, or for the benefit of their other children?

Ansr.: That he has no knowledge of any such distinction.

Q. by defendant: By whom was the farm that the defendant now lives upon occupied at the time the conversation passed which you have now related?

Ansr.: That it was occupied by Charles Chêne and Gabriel and Toussaint Chêne, his sons, and that Pierre Chêne lived upon his own lots.

Q. by defendant: Have you any knowledge that Pierre Chêne, one of the plaintiffs, laboured the farm in question, jointly with the other two plaintiffs?

Ansr.: That he has none.

GEORGE LYONS.

The plaintiff called upon Gregor McGregor, Esq., Sheriff of the District, who was duly sworn to declare the truth.

Q. by plaintiff: Did you at any time, and when, in your capacity of Sheriff, put the plaintiffs forcibly out of possession of the

farm now occupied by the defendant, and if so at whose requisition?

Ansr.: That in the month of January last, at the requisition of Mr. Arthur McCormick, upon his payment to the witness of the price at which the lease of Chêne's farm, now occupied by the defendant, was adjudged to him, the witness gave him legal possession, but used no force to dispossess the plaintiffs, for on his appearance the house and farm was delivered up by the occupier.

Cross-questioned by the defendant: Whom did you dispossess of the farm in question?

Ansr.: Charles Chêne was the defendant whom he was to dispossess.

GREGOR MCGREGOR, *Sheriff.*

Plaintiff called as witness Francois Deruisseau de Bellecour, who was duly sworn to declare the truth.

Q. by plaintiff: Did you at any time, and when, in your capacity of acting Notary, prohibit the defendant from cutting the wheat growing on the farm now occupied by the defendant, the property of the plaintiffs, if so was such prohibition signified to him in writing?

Ansr.: That on the 15th of July, last, the witness, at the requisition of Pierre, Gabriel and Toussaint Chêne, protested to the defendant against cutting the wheat growing upon the farm he now occupies, which the said Chênes claimed to be their property, as having

sowed it in the fall; that the defendant was then at harvest and told him that he was cutting his own wheat and had no other answer to make him, and this in presence of Chevallier de Celleron and Jos. Barron, and that a copy of the protest now filed and marked Y was left with the defendant.

D. Bellecour.

Mr. Roe, attorney for plaintiff, files in court the Essoin of Chevallier de Celleron, one of the witnesses subpœnaed in this Cause, and prays for further day to hear the said witness, and that the record may be left open for further proof. Continued accordingly to next court day.

Issued subpœna 11th October, 1791, at instance of defendant for James May vs. James McIntosh.

Lyons
vs.
L'Enfant.

On motion of Mr. Roe this cause continued for six weeks.

UNDER TEN POUNDS.

J. B. Frederick
vs.
Louis Vessenau.

Judgment for two pounds, thirteen shillings and fourpence, currency, and costs.

Bellecour
vs.
Monforton.

Continued for eight days.

Wm. Searl
vs.
Pierre Cardinal.

The parties appear. Judgment for one pound currency with costs.

Court adjourned to 13th October, 1791.

Charles Smyth, *Clerk.*

W. Dummer Powell.

Province of Quebec.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the 13th day of October, 1791, according to adjournment.

Durand
vs.
Lips.

The parties appeared. Continued by plaintiff on motion. Plaintiff produced Joseph Revaux, who was duly sworn to answer to interrogatories marked C already filed.

Ans. 1st Vers le fin d'octobre dernier Jean Lips à demandé au temoin la permission de se retiré chez lui on cas qu'il perdra son proces avec Durand il seroit obligé de quitte sa terre a quoi le temoin a consenté.

sa
JOSEPH X REVAUX.
marque.

Groesbeck
vs.
Visgar.

Parties appeared, continued en deliberé on plaintiff's attorney moving for Judgment.

Hazel
vs.
Meldrum & Park

Parties appear—Continued en deliberé.

Pierre, Gabriel, and Toussaint Chene
vs.
P. McNiff.

Mr. Roe for plaintiffs. Defendant in person. Mr. Roe called as evidence in this cause Alexis Labadie, of full age and not interested, who was duly sworn to declare the truth.

Q. by plaintiff: S'il a connoissance que les demendeurs aient semé de bled et quelle quantité sur la terre actuellement occupé par le Defendeur et en quelle tems?

Ansr.: Qu'il sait de sa propre connaissance que les Demandeurs ont ensemmé la terre occupé maintenant par la Defendeur,

que ils ont mis vingt cinq minots de sémance à peu pres de ce tems ci de l'année passée..

Q. by plaintiff: S'il connoit qui en à fait la recolté?

Ansr.: Qu'il sait que ce Mons. McNiff qui a recolté.

Q. by plaintiff: Avez vous connaissance et en quelque temps les demandeurs en demandé permission de Mons. McNiff de couper ce bled?

Ansr.: Il sait que Mons. McNiff voulant couper ce meme bled, les Demandeurs lui ont fait defence dissant qu'ils entendé de recolté en même, que le temoin et Jos. Barron furent present lorsque cet representation a été fait à Mons McNiff, qui leurs faisait comprendre qu'il ne les entendoit pas, mais c'étant expliqué par un interpret, il leurs faisait dire que ce ils voulaient l'empecher de couper son bled, il fallût lui baillé l'ordennance du Juge ce qu'il repeter lui meme en bon françois.

Q. by plaintiff: S'il étoit present lorsque les Demandeurs furent mis dehors de dessus la terre actuellement occuper par la Defendeur?

Ans.: Que ce printems il arrivé dans le moment que Mons. McCormick se disputé avoient les Chênes, mais qu'il n'étoit point temoin qu'il les aveoit chaser hor de la Maison, les butins etant ventre avant l'arrivé du temoin.

sa

C. S. Witness ALEX. X LABADIE.

marque.

Mr. McNiff, being present in Court, moves

that his Exceptions marked X be filed on Record in this cause, which being granted by the Court the defendant, Pat. McNiff, is informed that he must find an interpreter himself.

Mr. Roe produced as witness in this Cause François Gamelin, who was duly sworn.

Q. by plaintiff: S'il a connoissance que les Demandeurs aient semé du bled sur la terre actuelment en possession du Defendeur, en quelle tems et quelle etoit la quantité?

Ansr.: Qu'il sait que dans le mois de septembre de l'année dernier, ils ont semé sur la terre, qu'occupe actuelment le Defendeur, mais quelle quantité il ne pouvoit dire, mais que sur la même quantité de terrain qu'ils ont semê, le temoin a coutume de semé vingt quatre ou vingt cinq minôts.

Q. by plaintiff: S'il a connoissance qu'est qu'a le recolté?

Ansr.: Que selon sa connoissance c'etoit Mons. McNiff.

Q. by plaintiff: Ce avant que ce bled etaient coupé le temoin a la requisition d'aucune des parties en a estimé la quantité?

Ansr.: Qu'oui à l'instance de Bellecour Notaire, le temoin avec Robert Navarre, le Sieur Godefroy, et Etienne Nevernois en ont fait l'estimation dans leurs ames et conscience à deux Cent cinquante Minots.

François Gamelin.

Mr. Roe produced as witness Mr. Robert Navarre, who was duly sworn.

Q. by plaintiff: S'il a etoit appelé par les demandeurs pour estimer une pièce du bled sur la terre actuellement occupé par la defendeur, en quelle tems, et quelle quantité ont il trouver selon leurs estimation?

Ans.: Que vers le fin de juliet a la requete de Mons. Chênes il se transporta sur al terre actuelment occupé par la Defendeur, accompanié de Sieurs Gamelin, Godfroy, and Nevernois, et qu'il a estimer la piece a deux Cent cinquante Minot, conjointement avec les autres Messieurs.

ROBER NAVARRE.

Defendant filed Subpœna issued in this Cause and called upon James May as witness, who was duly sworn to declare the truth.

Q. by plaintiff: Have you any knowledge that the Defendants or any of them, on or about the month of August, twelve months past, or at any other time, and when applied to Mr. Geo. Lyons for leave to sow the land now occupied by the Defendant, and if so, what is that knowledge? Relate the whole thereof to the best of your recollection and belief.

Ansr.: That on or about the month of August, twelve months past, the Witness, who was employed by Mr. McCormick to dispose of some rum to raise the price of the farm in question, received a letter from Mr. Lyons, requiring the witness' opinion on the propriety of granting leave to the plaintiffs to sow the said farm, that before the witness had

answered this letter Mr. Lyons waited upon him in person to urge the witness' opinion, which the witness gave to Mr. Lyons against his exercising any authority under a power of attorney from Mr. McCormick respecting the said farm, which the witness supposed to be conditional, and knew to be lodged in the hands of Mr. Roe, to remain there until Mr. Lyons should have effected the payment of sixty pounds toward the purchase money of the said farm, which the witness then understood would entitle Mr. Lyons to a joint interest in it with Mr. McCormick, and the entire management of it during his absence; that Mr. Lyons, on a subsequent occasion, informed the witness, which was confirmed to him by Chas. Chêne, the father of the plaintiff, that he had given permission to the plaintiffs to cultivate the farm in question, although he could not raise the said sum of sixty pounds, and had not then withdrawn from Mr. Roe, Mr. McCormick's Procuration; that thereupon the witness observed to Mr. Lyons that he had committed himself in a matter in which he had no power and that he might draw upon him a disagreeable discussion with Mr. McCormick; that meantime after the father of the plaintiffs was dispossessed by the Sheriff, and Mr. McCormick put into possession, Charles Chêne came to the witness complaining of Mr. Lyons' conduct in pretending to have full power from Mr. McCormick, which had turned out to be only conditional, and after requesting the witness' opinion of the probable event of the dispute then foreseen

respecting the grain, observed to the witness that at all events if they should lose their crop they must recover the value from Mr. Lyons, who had induced them into the error.

Q. by the defendant: Have you at any time heard any of the actual plaintiffs, and which, observe that if they sustained any damage by means of the transaction as before related, they would have recourse to Mr. Lyons for the reimbursement of the same?

Ansr.: That in conversation with Pierre Chêne, one of the plaintiffs, respecting this dispute, when the witness' opinion who should make good to the plaintiffs the ultimate loss on the transaction was asked, and he not being able to give a decisive opinion, the plaintiff said to the witness it is my opinion we must recover against Mr. Lyons as being the person who authorized us to sow.

Q. by defendant: Have you any knowledge of any application by Mr. Lyons or either of the plaintiffs to procure Mr. McCormick's consent to and ratification of, their sowing upon the land, subsequent to his being put into possession?

Ansr.: The witness has no knowledge of any such application by the plaintiffs, but heard Mr. Lyons express his wish to see Mr. McCormick to procure from him his approbation of what Lyons had done under the supposed power of attorney, and urged the witness to use his influence with Mr. McCormick to that effect.

Q. by defendant: Have you knowledge

that the grain in question was the property of Charles Chêne and his family?

Ansr.: The witness understood from Charles Chêne that the seed in question belonged to him and his family, the greater part of his own raising, and that he had made an exertion in hopes of a large crop to enable Mr Lyons to make good his arrangement with Mr. McCormick for one-half of the farm for his family.

Q. by defendant: What did you understand the family to consist of?

Ansr.: Of Charles Chêne, his wife, Toussaint, Gabriel and Agathe, and a young boy in the house.

Q. by defendant: Did you consider Pierre Chêne, one of the plaintiffs, as belonging to the family?

Ansr.: No, as he was married and lived separate from his father, and had done so for many years.

Cross-questioned by Mr. Roe: Q. Do you know if Mr. McCormick at any time, and when, resided with Charles Chêne and his family?

Ans.: That he knows by having been told so by Mr. McCormick himself that after his return from Canada last winter he hired a room in the house then occupied by Charles Chêne upon the farm in question, for which he was to pay to the said Charles Chêne forty shillings per month.

Q.: Did you at any time during Mr. McCormick's said residence in Chêne's house, hear him express himself satisfied that the

Chênes have sowed so much wheat on the farm?

Ans.: That at some period of the winter, while Mr. McCormick resided with the Chênes, the witness heard him often express himself satisfied that they had a prospect of so large a crop, as he expected the produce of it would enable them to pay their half of the purchase money which Mr. Lyons had agreed for; that at that time the witness understood that an immediate payment of the difference between £31 7s. 6d., which the witness had received from Mr. Lyons in behalf of Mr. McCormick, on account of the purchase money and the sixty pounds he had agreed to raise should be made, and the witness understood from Mr. McCormick that some words having arisen between him and the Chênes respecting the delay of such payment, he had been obliged to quit the house.

Q. by the Court: What was the price of wheat at the time the wheat in question was sowed?

Ans.: Thirteen shillings and fourpence, York Currency.

JAMES MAY.

The defendant produced Mr. James McIntosh, who was duly sworn as witness in this cause.

Q.—Have you any knowledge that the plaintiff or either of them at any time, and when, last winter declared that they were ruined by Mr. Lyons' permission to them to sow the said

Land, and that if they were not permitted to reap they would have their recourse upon Mr. Lyons?

Ans.: That he never had any conversation with either of the plaintiffs to the best of his recollection, but that Charles Chêne, the father, and the mother have often observed to the witness how much they had been injured by Mr. Lyons, and that if they did not recover from McCormick they should look to him Lyons for compensation.

JAMES MCINTOSH.

The defendant submits to the Court that his principal voucher, being Mr. McCormick's lease to him of the farm in question, is already before the Court in a certain cause lately agitated, and prays that the Clerk may be ordered to bring up the said Lease. Ordered accordingly.

Mr. Roe, for plaintiffs, prays the Judgment of the Court. Continued en deliberé.

UNDER TEN POUNDS.

Bellecour
vs.
Monforton.

Continued.

Court adjourned to 20th October, 1791.

W. D. P., *J.C.P.* C. SMYTH, *Clerk.*

Province of Quebec.
District of Hesse.

COURT OF COMMON PLEAS holden at L'assomption in the said District on Thursday, the 20th day of October, 1791, according to adjournment.

Present: Wm. Dummer Powell, Esq., First Judge of said Court.

James McDonnell
vs.
Charles Poupard, dt. Lafleur.

Mr. Roe, of counsel for plaintiff, filed Declaration and Defendant being called and not appearing, Mr. Roe prayed Default.

The same
vs.
Louis Meloche.

Mr. Roe, of counsel for plaintiff, filed declaration and defendant appearing acknowledged to owe as in the said declaration it is set forth, whereupon Court considers that the plaintiff do recover the sum of Seventeen Pounds, Four Shillings and Eightpence Currency with Costs of suit.

Durand
vs.
Lips.

Parties appeared. Plaintiff produced Zacharie Cloutier as witness in this cause, who was duly sworn to certain interrogatories already filed marked G.

Ans. 1st: Qu'oui.

Witness, C. S. Zacharie X Cloutier.
sa
marque.

Continued en deliberé by the Court on motion for Judgment by plaintiff.

Meldrum & Park
vs.
Louis Campeau.

Sheriff returned Writ of fi. fa. issued in this Cause with opposition of Jacques Campeau annexed to the sale of a certain Lot of Land seized as belonging to the defendant. Jacques Campeau appeared in support of his opposition.

Mr. Roe for plaintiffs. Opponent filed Ex. A and on motion continued to next adjournment for production of Titles, etc.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe of counsel for plaintiffs. Defendant in person. Plaintiff filed Subpœna D, and produced as witness in this Cause Wm. Christie, who was duly sworn to declare the truth. Who says that on the 5th of February, 1788, he was Clerk to the Plaintiffs and delivered the three Items charged, Two pounds, twelve shillings, in defendant's Account under that date to Molly Crofton on defendant's Account; that the plaintiffs were accustomed to deliver goods to that person on defendant's Account, but whether they were authorized so to do by the Defendant directly or indirectly by payment of articles so delivered the witness cannot say.

Q. by plaintiff: Did you at any time, and when, deliver to the defendant the plaintiff's account containing the three said items of charge, and did he accept or deny the same?

Ansr.: That in April, 1789, he delivered the plaintiff's account to the defendant containing the said three items of charge, to which the defendant made no other objection than to a charge of thirty shillings under the 29th February, 1788, for articles delivered to Molly Crofton without order.

Cross questioned by defendant: Q. by defendant: Do you recollect, at any time the defendant objecting to a charge of a quantity of iron in plaintiff's account, and what is your knowledge on the subject?

Ansr.: That he recollects such objection being made, the settlement thereof being deferred by one of the partners on account of the absence of the other, he thinks by Mr.

Meldrum, to the return of Mr. Park, but the original transaction was prior to the witness living with the plaintiff.

Q. by defendant: Do you recollect at any time, and when, the defendant forbid the plaintiffs to deliver anything on his account without a written order?

Ansr.: That he does recollect such directions being given by the defendant, but cannot say at what period, but thinks that subsequent to such direction no Credit was given on defendant's account without his order.

WILLIAM CHRISTIE.

Plaintiff produced Jno. Bapte Craiste as witness, who was duly sworn.

Q. by defendant: Avez vous reçu, et en quell tems de demandeurs par ordre de Mr. Smith une quantité de ferment de moulin?

Ansr.: Qu'il construissé un Moulin a la Pienier en 1783 que Mr. Smith devoit lui fournir les ferments que faisoit Ballar fourgeron, que le temoin se rendant chez Ballar pour recevoir l'ovrage a pris de lui que tout le fer de Mr. Smith avait été enlever par les Merchands de Fort—qu'apres le temoin apris de un quellque un que le fer étoit chez Monsr. Park lui promette qu'il farroit faire son fer-Park a qui le temoin s'addressa pour le retiré que Monsr. Park lui promette qu'il farroit faire son ferment, et en effet le temoin a son retour de la Pineir le reçu de Monsr. Park, mais qu'il ne scaurait dire si dans cet occasion Mr. Smith l'addresser a Mons. Park ou non.

Cross questioned by defendant. Q. by defendant: Quelle connaissance avez vous, que Mr. Smith à vraiment remis au fourgeron Ballar la quantite de fer necessair pour les ouvrage qu'ils s'ettoit obligé de vous procurer?

Ans.: Qu'il y a si longtemps qu'il ne se souvient plus de parole mais il sait que Ballar la fait comprendre dans tems que Mr. Smith lui aveoit remis toute la quantité de fer mais que d'autres persons l'ont enlever pour ses dettes.

Witness, C. S. J. B. CRAISTIE.

Defendant produced Wm. Christie, witness in his defence, who was duly sworn.

Q. by defendant: Have you any knowledge that the plaintiff employed the defendant to survey a certain Tract of Land at the Pinery? Declare when and generally your knowledge of the transaction.

Ans.: That in the winter, he thinks of the year 1789, the plaintiff did employ the defendant, then going up the River, to survey at the Pinery, and that at desire of the plaintiff the witness made out a memorandum now filed marked Z, in order to guide the defendant in the survey.

WILLIAM CHRISTIE.

Defendant produced Jno. Baptiste Craistte, who was duly sworn.

Q. by defendant: Avez vous connoissance que les Demendeurs l'année 1790 ont enlever

de la Pinier une quantité de bois a moi appertenant?

Ansr. Que l'année 1790 Mons. Park a emporter environ douze ou quinze morceau de bois appertenant a Mons. Smith et le restant de bois le temoin a entendu dire avoir été ausi Emporté par Mons. Park, mais il ne l'a pas vû.

Q. by defendant: Du mois de Janvier jusqu'a mois d'avril 1790 étiez vous en prison a la poursuite des Demandeurs et dans cet tems, avez vous presenter a la Cour deux Requet representant votre situation et demandant le previlege d'un Debiteur?

Ansr.: Oui.

Q. by defendant: Comment avez vous obtenu votre liberté?

Ans.: Qu'il l'obtenû sa liberte par la vente de ses droits qu'il pouvoit avoir dans le Moulin de la Pinier.

Q. by defendant: Auriez vous consente a telle vente si autrement vous pouviez obtenir votre liberté?

Ansr.: Que non, sans le plus grands avantage qu'il n'a reçu.

Q. by defendant: Dans l'automn 1790 avant d'étre emprisoné le demandant vous ont t'il proposé un acquitance avec cent ponds pour le Moulin a la Pineier, a condition que le defendeur leur cedera ses droits?

Ans.: Que les Demandeurs lui ont offer de compromettre leur differends, et de l'acquiter, si Mr. Smith voulu retirer une action qu'il avoit alors ententer contre le temoin et ceder la Vente que le temoin lui avoit faite un le moulin.

Q. by defendant: Si les Demandeurs n'ont pas offre à votre femme une presente de l'Indiennes, si Mr. Smith ne rentre dans le moulin?

Mr. Roe for the plaintiffs excepts to the above question as being impertinent to the cause. Overruled by the Court and the witness directed to answer.

Ansr.: Que Mons. Park a promis a sa femme une presente d'Indienne s'il garder le Moulin, mais s'il le perdit il perdera assa en dechargeant le temoin de sa dette.

Q. by defendant: Si les Demandeurs vous ont donné une memoire par ecrit, du bois a la pineier, et si en même tems Mr. Park ne vous a pas dit, qu'il s'arrangera avec le Defendeur pour le Montant du dit bois?

Ansr.: Qui oui. Le memoire filé a present marqué y.

Q. by defendant: Si Mons. Park engagea au mois d'avril, 1790, la conducteur des travaux du defendeur à la Pineier, et si en consequence ces dit traveaux ne fus pas arreté?

Ansr.: Oui.

Q. by defendant: Si les engager de Mr. Smith pour la coupe de bois à la Pineier en 1789 an 90, ne fus pas obligê de desindre le bois au Detroit?

Ansr.: Oui.

J. B. Craistte.

Defendant produced Jno. Baptiste Rocout who was duly sworn.

Q. by defendant: S'il a vû Toussaint Jasment faire sa marque a l'engagement filé marqué X apris lecteurs fait?

Ansr.: Qu' oui.

Q. by defendant: S'il a vu Jean Baptiste Craistte signé l'engagement filé marqué W?

Ansr.: Qu' oui.

J. Roucoût.

Defendant produced François Deruisseau de Bellecour who was duly sworn.

Q. by defendant: If the Protest interpellation and answer contained in Exhibit V now filed were made and obtained in his presence?

Ansr.: Yes, in presence of the witnesses whose names are subscribed.

F. De Bellecour.

Issued Subpœna 1st November, 1791, to defendant, February 3rd.

C. Smyth, *Clerk.*

On motion of Mr. Smith, with consent of plaintiff's attorney, cause continued for a fortnight.

Edward Hazel
vs.
Meldrum & Park.

Parties appear. On motion of defendant this cause continued for three months.

James McDonnel
vs.
Hugh Holmes.

Mr. Roe for plaintiff. Judgment for £7. 17s. 1d. currency on written confession filed and proved.

Bellecour
vs.
Monforton.

Parties appear. Continued.

Court adjourned to 27th October, 1791.

C. SMYTH.

W. D. P., *J.C.P.*

[The Volume now ends: what follows is from a paper-bound foolscap volume in the Ontario Archives endorsed "No. 2 Western District from October, 1791, to March 1792, inclusive".]

Province of Quebec.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District on Thursday, the twenty-seventh day of October, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

James McDonell
vs.
Chas. Poupard.

Discontinued by plaintiff on motion.

Meldrum & Park
vs.
Louis Campeau, on the opposition of Jacques Campeau.

Parties not appearing; cause continued.

CAUSES UNDER TEN POUNDS.

Continued.

Bellecour
vs.
Monforton.

Court adjourned to the Judge's Chambers for Thursday, 3rd day of November, 1791.

W. D. P., *J. C. P.* CHAS. SMYTH, *Clk.*

Province of Quebec.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the third day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of the said Court.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe appeared and continued Cause to next adjournment.

Durand
vs.
Lips.

Mr. Roe appeared; continued en deliberé.

Groesbeck
vs.
Visgar.

Mr. Roe appeared; Cause continued en deliberé.

Meldrum & Park
vs.
Campeau, on the opposition of Jacques Campeau.

Continued on Motion of Mr. Roe.

P. G. & Toussaint Chéné
vs.
Pat McNiff.

Mr. Roe of counsel for plaintiffs moves the Court for Judgment, whereupon it is ordered by the Court, before it proceeds to Judgment definitively, that a report be made to the Court of the real quantity of Grain reaped by the defendant on the Land sowed by the plaintiffs, together with the expense of Harvesting, and that such report be made on Oath by Experts to be named by the parties respectively, two by plaintiffs and two by defendant, and, in case of difference of opinion, by a fifth, to be chosen by the other four, and if on due proof of service of this Rule on either party it shall appear to the Court that one of the said parties shall refuse to name such experts in eight days, the Court will proceed to such nomination *ex officio*.

Cause continued to next adjournment.

UNDER TEN POUNDS.
Bellecour
vs.
Monforton.

Continued on motion to first Court day in April next.

Meldrum & Park
vs.
Louis St. Obien.

Sheriff Returns Writ of fi. fa. issued in this Cause with return of *Nulla bona,* and it being suggested by Mr. Roe of Counsel for the plaintiffs, that the defendant has goods and chattels in the said District whereof the said Debt and Costs may be made and levied. It is ordered that an *Alias* Writ of Execution do issue commanding the Sheriff to Levy the said Debt and Costs.

Al. fi. fa. issued 3rd November, 1791. Returnable in May, 1792.

Sub. costs	£1 10 0
Writ	0 5 0
	C. S.

McDougall
vs.
Lyons.

Sheriff Returns Writ of fi. fa. issued in this Cause, with the moneys levied by virtue thereof, whereupon it is ordered by the Court, on Motion of Mr. Roe, of Counsel for the plaintiff, that the Sheriff do pay over to plaintiff the said moneys, being Twenty-One Pounds, Sixteen Shillings and Eightpence one farthing, in part satisfaction of his judgment.

Court adjourned to 10th November inst.

WM. DUMMER POWELL, *J. C. P.* CHAS. SMYTH, *Clk.*

Province of Quebec.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'assomption, in the said District, on Thursday, the 10th day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

The Court met pursuant to adjournment, and further adjourned to Thursday, the 17th day of November inst.

WM. DUMMER POWELL, *J. C. P.* CHAS. SMYTH, *Clerk.*

Province of Quebec
District of Hesse.

COURT OF COMMON PLEAS, holden at L'assomption in the said District, on Thursday, the 17th day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

P. G. & Toussaint Chéné
vs.
Pat McNiff.

Mr. Roe. of Counsel for the plaintiffs, files return of Rule made in this cause on the 3rd day of November, inst. Defendant called; did not appear, but communicated in writing his receipt of the rule, and refusal to comply with the same, whereupon Mr. Roe, for the plaintiffs, proceeded to name Francois Gamelin and Alexis Labedie, and the Court requests Wm. McComb, Esq., and James May to join themselves with the said nominees to enquire and report on the quantity of grain reaped by the defendant from the ground sowed by the plaintiffs on the farm leased by the defendant of Arthur McCormick and also on the probable expense of harvesting the same, and report their opinion on oath to the best of their information and belief in eight days.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe, of Counsel for plaintiffs. Defendant in person. Defendant files petition marked L with the order of first Judge for the appearance of Wm. Park, one of the plaintiffs in this Cause, to answer on oath to certain interrogations thereunto annexed, whereupon the said Wm. Park appearing humbly submits to the Court how far he is bound to answer to said Interrogations, inasmuch as the defendant hath brought forward certain witnesses to prove the facts stated in his Plea, and prays that he may be exempted from answering to the same, and the defendant suggests to the Court that he has not brought up any witnesses to answer to the facts of the said interrogatories, and prays that the said Wm. Park be sworn. Ordered accordingly.

Wm. Park, Esquire, one of the plaintiffs in this Cause, was duly sworn to answer certain interrogatories filed as above.

Ans. to first interrogatory: Thomas Smith, about that period, lived at or about McIntosh's house, and not appearing to me to have much to do, I asked him if he would transcribe a Blotter whose leaves were loose into a new Book, which he did; how long he was I cannot say, as he did not attend regularly, but I suppose a steady would do the same in five or six days.

Mr. Park objects to answer to the second interrogatory, as in the terms in which it is couched it would tend to charge himself with a public offence, whereupon the Court ordered that he do not answer to the same.

Ans. to third interrogatory: In the fall of

1783 I heard Bellar was making iron work for a saw mill, built at the pinery by John Baptiste Creste, and at or about the same period the said Bellar owed large sums to different merchants in Detroit, who considering the state of his affairs, agreed to take their payments out in work at prices agreed to, and in proportion to their respective debts. I was nominated to direct Bellar by the Creditors, and to regulate the same, as well as to receive some old debts which were owing Bellar and divide them proportionally, when received; that the iron work of Creste's Mill was looked upon as a debt of sixty pounds for the benefit of the creditors, when completed, and yet Bellar has not iron to finish the same, that upon Mr. Smith's application to me and a promise to pay the same, I gave Bellar an order upon Messrs. Sharpe & Wallace for as much iron as would finish the work, the amount of which was to be deducted from the sum promised—the iron work was, I think, completed, and to the best of my recollection, was delivered to Creste, but where and at what time I cannot say.

Ans. to fourth interrogatory: In the year 1788 I caused some pieces of timber to be taken out of Mr. Beaubien's yard by Creste's particular desire as his own, and accounted to him accordingly.

The fifth interrogatory was overruled upon representation of Mr. Park, that it is impertinent to the cause.

Ans. to sixth interrogatory: I never employed Mr. Smith to survey or fix boundaries

either to Brown land or Baptiste Druillard's farm, further than he came to our store and acquainted me he was going to measure and survey between the mouth of Detroit River and the River Reason and up that River, and asked if I had any commands that way. I told him that William Brown had an Indian Deed for Land there, and as he would be measuring the neighbour's farms, I would be glad to know the width of it and of Baptiste Druillard's farm.

Ans. to seventh interrogatory: In April, 1790, I carried from the pinery some boards or plank and some more in the course of that summer, being part of property sold and delivered to Meldrum & Park by J. B. Creste, that the quantity of timber specified in the Exhibit Y by me, was said to be upon the ground, but did not count it.

WILLIAM PARK.

Defendant called upon Walter Roe, Esq., as witness in this cause, who was duly sworn to declare the truth.

Ques. by defendant: Have you any knowledge and what of the defendant in the spring of 1790 accounting with Peter Laughton for twenty-eight and a quarter cords of firewood, four feet long, cut on the borders of the River St. Clair in Autumn 1789 in order to be thrown on the Rafts on their way to Detroit?

Ans.: I do recollect having heard Peter Laughton say that he had cut some wood on the River St. Clair for Mr. Smith, the defend-

ant, on account of Wm. Youngs, who was then his servant, but whether the same was to be carried to Detroit or elsewhere witness knows not, neither has any knowledge of the quantity.

W. Roe.

Defendant produced as witness in this Cause John Martin, of full age and not interested, who was duly sworn to declare the truth.

Q. by defendant: Was the Paper now filed and marked with the letter "M" purporting to be a Deed of Sale of the Pinery by Jno. Baptiste Creste to Meldrum & Park, executed in your presence, and is the signature John Martin at the foot of the said deed of your handwriting, and was the tenor of the same explained to the said Creste in any language that he could understand before the execution of the said Deed?

Ans.: That the Deed now filed was executed in presence of the witness, and that the signature John Martin is in the proper handwriting of the witness, that the witness recollects part of the Deed was explained to J. Bte. Creste in French and that Mr. Park told him that it was the same that had been before read to him at the Sheriff's.

Q. by defendant: Do you recollect any part of the contents of the deed?

Ans.: Yes. The witness understood that Creste gave up all his right and Title to the Pinery, whatever it might be.

John Martin.

Defendant produced Mathew Dalson, who was duly sworn to declare the truth.

Q. by defendant: Did you see the defendant surveying Lands in the River St. Clair above and below the Belle River in January, 1789, or at any other period, Dolsen?

Ans: On the 9th of March, 1789, the witness saw the defendant run the chain from below the Belle Riviere down to Wm. Thorn's.

MATTHEW DOLSEN.

The item in the plaintiff's account under date of 7th September,1785, being delivered on defendant's account by his verbal order, of which the plaintiffs have no evidence, they submit the same to the decisive oath of the defendant praying that in case he refuses the same the plaintiff's oath may be taken thereon, and also submit to the said oath of the defendant the item of credit of 20th January, 1784, which the plaintiff's suggest to have been occasioned by their breach of the specific agreement to make up the iron for the mill work on Mr. Smith's undertaking to pay the labour.

The defendant being duly sworn, answers:

That he recollects that when the Iron furnished by him to Bellar for Creste's Mill work was in part wrought up and withheld from Creste by Meldrum & Park until they should be paid or secured in the payment of the price of Bellar's labor, he, the defendant, did wait upon Meldrum & Park claiming the iron as furnished by him, and stating that the price

of Bellar's labor was to be deducted in account, but if they, Meldrum & Park, had a right to the produce of Bellar's labor, and that he could not get his Iron from them in any other way, he must of necessity pay them for that labour, and thinks that the £38 9 paid by him to them on the 20th January, 1784, might be on account thereof.

T. Smith.

The defendant files Exhibits marked N, O, P, Q, R, S, T, V, U, W, X, Y & Z, and the parties having finished their pleading mutually submit the same to the Judgment of the Court.

Continued by the Court en deliberé.

Mr. Roe for plaintiff prayed the Judgment of the Court. Defendant did not appear.

Wm. Groesbeck vs. Jacob Visgar, Curator to the Estate of Gar. Teller.

The Court having maturely weighed the Declaration and answers in this Cause, as well as the books, papers and vouchers exhibited by the plaintiff, considers that his Suit be dismissed and that the Defendant do recover his Costs of Court to be taxed, and altho' the Judgment in this Case does not fully meet the words of the Ordinance requiring in certain cases that the Reasons and Grounds of the Judgments of the Courts of Common Pleas should be assigned of Record. The Court considering the large claim of the plaintiff and the absence of those interested in the Intestate Estate, is willing for the satisfaction of the Parties to state concisely, That notwithstanding the singular favor to Plaintiffs by

the Ordinance admitting any proofs known to the practice of the Laws of England or France heretofore introduced in the Province of Quebec, the Court can admit nothing upon Trust on the Plaintiff's assertion without some proof, and that the Books and Exhibits filed by the Plaintiff afford none which can be deemed legal under any extent of the particular clause in the Ordinance of 1789. First the Books from whence the account is extracted are kept in so irregular a manner, even by the Testimony of the divers persons who swear to the several entries, as totally to destroy their Credit in every case, but where the Entry is corroborated by actual proof of the delivery of the Articles charged for, it is sworn that they were made in the Waste Book occasionally by strangers and passengers on the loose dictum of the Plaintiff, frequently with a retrospect to a distant period. It is needless to remark the abuse which may be made of a precedent to sustain such sort of Testimony, but they carry with them innate marks of error and negligence, which wanted not the age of foreign evidence to invalidate their testimony. The orders filed as vouchers have no docket or mark of entry to direct to the date in the Waste Book under which they stand to the Debit of the deceased. How is it possible then to discriminate and apply a voucher of one date (among many for similar articles) to any precise Entry? In such a total absence of legal Evidence nothing would follow but a non-suit, unless the plaintiff had brought his action during the life of Teller,

in which case under favor of the boundless clause, in the late Ordinance ye Defendant might have been brought forward in some shape to discharge himself *in foro conscientiae*, failing which presumption might have served the plaintiff, but the season is past and the Curateur cannot be applied to upon the equitable principle that no one shall profit of his own wrong, and the whole complexion of the suit does not lead the Court to commiserate the plaintiff, who certainly if he loses anything must attribute it to his own supineness and neglect.

Cs. SMYTH, *Clk.*

Meldrum & Park
vs.
Louis Campeau,
the opposition
Jacques Campeau.

On Motion of opponent, and by consent of the plaintiffs, Court grants Main Levée of the Seizure made on the Land in question, and that the Sheriff be ordered to desist accordingly.

Lyons
vs.
L'Enfant.

On Motion of Mr. Roe this Cause is continued for three months.

CAUSES UNDER TEN POUNDS.

Charles Smyth
vs.
Pat McNiff.

Plaintiff in person. Defendant being called, but did not appear, whereupon the Court after considering the plaintiff's demand condemn the defendant to pay to the plaintiff the sum of Three pounds, Seven shillings and Sixpence with Costs.

Issued execution on 30 November, 1791. Returnable in two months.

Debt	£3	7	6
Costs	0	10	5
	£3	17	11
Writ	0	1	0
Bailiff	0	4	0

C. S.

Jos. Elam vs. Pat McNiff.

Plaintiff in person. Defendant being called, but not appearing, Court after considering the plaintiff's demand, condemn the defendant to pay the sum of Sixteen shillings and Sixpence with Costs.

Issued execution 30 November, 1791, returnable in two months.

Debt	£0	16	6
Costs	0	10	5
	£1	6	11
Writ	0	1	0
Bailiff	0	4	0

C. S.

Court adjourned to 24th November, inst.

CHAS. SMYTH, *Clerk.*

Province of Quebec. District of Hesse.

COURT OF COMMON PLEAS, holden at L'assomption in this District, on Thursday, the 24th day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of the said Court.

P. G. and Toussaint Chene vs. Pat McNiff.

Mr. Roe for plaintiffs appears and filed Report of Experts appointed by Rule of last Court day marked with Rule and return of service upon defendant annexed. Cause continued for 8 days.

John Askin vs. Etienne Latour, dit Bellar.

Sheriff returns Writ of fi. fa. issued with the moneys levied, whereupon it is ordered on Motion of plaintiff filed and marked that the Sheriff do pay over to the plaintiff the said moneys in satisfaction of his Judgment.

UNDER TEN POUNDS.

John Laughton vs. Harry Facer.

Judgment for the sum of eight pounds fifteen shillings, Halifax currency, with costs.

Issued execution 16th December. Returnable in two months.

Debt	£8	15	0
Costs	0	10	5
	£9	5	5
Writ	0	1	0
Bailiff	0	4	0

Court adjourned to 1st December, 1791.

CHAS. SMYTH, *Clerk.*

WM. DUMMER POWELL,
J. C. P.

Province Quebec. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption, in the said District on Thursday, the 1st day of December, 1791.

Present: The Honourable Wm. Dummer Powell, Esquire, first Judge of said Court.

Gervais Hodiesne vs. Jean Louis Lajeunesse.

Mr. Roe, of Counsel for plaintiff, filed Declaration. Defendant appears in person, and says that he is not indebted in manner and form, inasmuch as he hath made divers payments to plaintiff on account of his said note, and prays that the same may be enquired of by the Court, and the plaintiff does so likewise. Cause continued for trial on next Court day.

James Abbot vs. J. Bte. Campeau.

Sheriff returned Writ of fi. fa. issued in this cause with the moneys levied, whereupon it is ordered, on Motion of Mr. Roe, that the same be paid over to plaintiff in satisfaction of his said Execution.

Robert Gowie vs. J. Bte. Marsack.

Sheriff returned Writ of fi. fa issued in this cause, with the moneys levied, whereupon it is ordered, on motion of Mr. Roe, that the same be paid over to the plaintiff in part satisfaction of his judgment.

Guillaume St. Bernard vs. J. Roucout.

Sheriff returned Writ of fi. fa issued in this cause with the opposition of Joseph Thibault to the payment of moneys levied and now returned into Court annexed, whereupon it is ordered on motion of Mr. Roe, of counsel for opponent, that Guillaume St. Bernard do

shew cause in eight days why the conclusions of the said opposition should not be granted.

P. G. and Toussaint Chene vs. Pat. McNiff.

Mr. Roe, of counsel for plaintiffs, states to the Court that the eight days allowed by the ordinance for the homologation of the report of the experts, filed last Court day, being expired, prays the judgment of the Court, whereupon the Court further continues the cause en delibéré.

Meldrum & Park vs. Thomas Smith.

Mr. Roe, for plaintiffs, appears and prays the Judgment of the Court. Continued by the Court en delibéré.

P. Durand vs. John Lipps.

Mr. Roe appeared for the defendant. Cause continued to next adjournment.

Meldrum & Park vs. Louis Campeau.

Sheriff returned moneys levied by virtue of Execution issued in this cause, whereupon it is ordered by the Court that the same be paid over to plaintiff in part satisfaction of his Judgment.

Court adjourned to the 8th inst.

CHAS. SMYTH, *Clerk.*
WM. DUMMER POWELL, *J.C.P.*

Province Quebec. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption on Thursday, the 8th day of December, 1791, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esquire, first Judge of said Court.

Gervais Hodiesne
vs.
Jean Louis
Lajeunesse.

Mr. Roe, for plaintiff, filed Exhibit A. Defendant in person appeared, but failing to produce the proof as by order of last Court, as is directed, the Court consider that the plaintiff do recover from the defendant the sum of Sixteen Pounds Four Shillings and Twopence Currency, as by his Declaration it is prayed, with Costs of suit.

Issued fi. fa 15th November, '92. Ret. 1st Court in June next.

Debt	£16	4	2
Costs	6	8	2
	£22	12	4
Writ		5	

with interest from 24th Nov. last.

C. SMYTH, *Clerk.*

Guillaume
St. Bernard
vs.
J. Roucout, on the
opposition of
Joseph Thibault.

Mr. Roe, for opponent, filed rule of last Court day, with return of service on plaintiff, who not appearing, the Court examined the titles on which the judgments were rendered, and not seeing any priority of mortgage, on motion of Mr. Roe, it is ordered that the moneys levied by the Sheriff be distributed as follows:—

G. St. Bernard
vs.
J. Roucout.

Amount levied by Sheriff ..	£28	19	10
Amount of Costs included in execution ..	£5	6	6

Jos. Thibault vs. J. Roucout.

Amount of Costs taxed		8	19	0	
To Costs on distribution to opponent		3	5	6	17 11 0
					£11 8 10
G. St. Bernard's demand ..	£52	15	0		
Int. thereon from 19th May, '91, to 8th December following		1	16	4	
	£54	11	4		
Proportion is					£5 4 4½
Jos. Thibault's demand ..	£62	10	0		
Int. thereon from 10th May, '91, to 8th Dec....		2	3	9½	
	£65	1	9½		
Proportion					£6 4 5½
					£11 8 10

Meldrum & Park vs. Paul Campeau and wife on the opposition of Madame Campeau.

Mr. Roe appeared for plaintiff and stated that on the 26th day of May last this honourable Court were pleased to order "that the Sheriff proceed to the sale of the premises subject to the demand of the minor Children of Guillaume La Forest and Genevieve Fovelle dt Bigras to the amount of two thousand six

hundred and thirty-five Livres, upon suggestion of Mr. Roe, for plaintiff, that an indefinite number of minor claimants stated in the Sheriff's notification of sale would materially affect the value of the Land, and praying that a further day may be given to the plaintiff to ascertain the ages of the children of the said Genevieve Bigras and Guillaume Laforest" he accordingly now produces Extracts from the Registers of Baptism of the Parishes of St. Anne and L'Assomption, certified by Messrs. Frichette and Dufaux, whereby it appears that Prosper and Alexis Laforest are still minors, whereupon the Court orders that the Sheriff do proceed to the sale of the premises seized, subject to the claim of the said minors being one thousand three hundred and seventeen Livres ten sols.

Chas. Smyth, Esq.
vs.
William Groesbeck.

The Summons in this Cause being returned by the Sheriff duly served and the Declaration filed, the defendant was thrice called and not appearing, act of his Default is granted to the plaintiff, he being an officer of the Court, the record is thus made and listed by

WM. DUMMER POWELL, *First Judge C.P.*

Meldrum & Park
vs.
Thos. Smith.

Mr. Roe, of Counsel for plaintiff, appears and prays the Judgment of the Court, whereupon the Court having maturely weighed and examined the Declaration, Plea, Answers, and several Exhibits filed by the parties respectively in this cause, it is considered that the Plaintiffs do recover from the Defendant, become Incidentally Plaintiff, the sum of

Fifty-five Pounds Two Shillings and Sevenpence halfpenny, New York Currency, being Thirty-four Pounds Nine Shillings and One penny halfpenny Currency of the Province, with Costs of Suit, reserving nevertheless to the said Incidental Plaintiff such recourse as he may think proper to recover of the plaintiffs the several items of his Account filed, except such as are to his credit in the account filed by plaintiffs, and the further sum of six pounds five shillings allowed by the Court to be ample compensation for his time and labour in transcribing a Book of Account as admitted by plaintiffs, and therefore deducted from their demand.

Although this Cause is not of a nature subject to the Ordinance which requires from the Court below assignment of the grounds of its Judgment, yet for the information of the parties it is stated that by the laws of France as well as England compensation is admitted on the claim of the Incidental Plaintiff, as well as on a plea of sett-off, but the matter compensated must be of a nature as clear as the Demand. Thus against a Debt by Account not liquidated compensation is admitted for moneys laid out and expended for labour done and performed and generally for such clearly established as in conscience the plaintiff ought not to withhold payment of, but such objects of compensation must be clear, obvious and proved not to arise out of remote causes of litigation, for satisfaction of which the party must have recourse to his specific action as afforded by the Law and Custom.

In the present instance no part of the defendant's Account is of this nature to be compensated, but the Items admitted in the plaintiff's account or subtracted from the Balance by the judgment of the Court—all the other objects involve matter foreign to this action of Debt, and as to them the Incidental Plaintiff, not having adduced the legal proofs in a legal manner, is considered as nonsuited and left to his proper Action or Actions.

P. G. and Toussaint Chéne vs. Pat McNiff.

Plaintiffs fyled return of judgment, with defendant's refusal to comply therewith. 31st December, '91. C.S.

Mr. Roe, for plaintiffs, appears and prays Judgment, Whereupon the Court having maturely weighed the Declaration, Plea and Answer, as well as the Testimony adduced and Exhibits filed in this Cause, it is considered that the plaintiffs do recover of the defendant the sum of Sixty-Two Pounds Ten Shillings Currency with Costs of Suit, unless within fourteen days the Defendant shall at the requisition of the plaintiffs deliver to them one hundred and eighty Bushels of Wheat, the produce of the seed sowed by the plaintiffs on the Land leased by the defendant from Arthur McCormick.

Issued Execution on 31 December, '91. Ret. first Court in June, 1792.

Debt	£62	10	0
Costs	17	18	0
	£80	8	0
Writ		5	0

Interest on £62 10 from

C. S.

Court adjourned to the 15th December, '91.

C. SMYTH, *Clerk.*

W. D. POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption, on Thursday, the 15th day of December, 1791, according to adjournment.

Province Quebec. District of Hesse.

Mr. Smyth prays that the defence of the defendant, who does not appear upon being thrice called, may be recorded, and for his profit thereof that on Thursday next he be permitted to prove by witnesses his demand. Ordered, that this Cause be tried on Thursday next.

Smyth vs. Groesbeck.

W. D. POWELL, *J.C.P.*

UNDER TEN POUNDS.

Andre Peltier vs. Alexis Maisonville, Esq.

Parties appeared. Defendant states to the Court that he acknowledges the plaintiff's mare broke her leg on a bridge within his parish, and that at the time the accident happened he told the plaintiff not to touch the mare and that he would see him paid, but this promise was made in consideration that as sous voyer he could oblige the parties who were concerned in keeping the said bridge in good order to reimburse the price, and that it would be an hardship for him to sustain the damage complained of until the principals were prosecuted.[53]

Cause continued.

Court adjourned to 22nd December, 1791.

CHAS. SMYTH, *Clerk.*

WM. DUMMER POWELL, *J.C.P.*

Province of Quebec.
District of Hesse.
22 December, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption, on Thursday, the 22nd day of December, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge of said Court.

Chas. Smyth.
vs.
Wm. Groesbec.

On prayer of plaintiff, Clerk of the Court, this Cause is continued for return of subpœna, the state of the river preventing the officer from making his Return.

W. DUMMER POWELL, *J.C.P.*

André Peltier
vs.
Pierre Reaume, dt. Thimus et Jos. Bartiaume.

Parties appeared. Defendant acknowledges that the bridge in question was in bad repair and the plaintiff's mare broke her leg in consequence. Whereupon the Court considers that the plaintiff recover from the defendant the sum of Twelve Pounds Currency with costs.

MEM.—It appears that it is possible the Court misunderstood the report of the value of the mare, mistaking Halifax for New York currency.[53]

W. D. P.

Andre Peltier
vs.
Alexis Maisonville.

Dismissed.

Jean Tourmû dt. Jeannet et Antoine Meloche Marquilliers d'L'Assomption
vs.
Etienne Meloche.

Parties appeared. Judgment for the sum of Eighteen Shillings et Fourpence Currency with Costs upon confession of defendant.

Court adjourned to 26th January, 1792.

CHAS. SMYTH, *Clerk.*
WM. DUMMER POWELL, *J.C.P.*

CHAPTER VII

The Fifth Period of British Rule: 1792-1794

Civil Courts

First Part

THIS period began with the creation of Upper Canada as a separate Province under the provisions of the Canada or Constitutional Act of 1791 (1).

The Province began its separate Provincial career on December 24, 1791, by virtue of the Proclamation dated November 18, of General Alured Clarke, Lieutenant Governor at Quebec in the absence of Lord Dorchester, the Governor General (2). It speaks volumes for the difficulty of transmission of news at that time that though an official messenger must have been despatched immediately after Clarke's Proclamation of November 18, the news did not reach Detroit until after the Sittings of the Court of Common Pleas on the 26th day of January, 1792. Nevertheless the District of Hesse was in the Province of Upper Canada from and after December 24, 1791, and the first sittings of the Court of Common Pleas in the year 1792 was in the Province of Upper Canada not in the Province of Quebec.

Second Part

Until October 15, 1792, the existing law was in force, viz., the French Canadian Law in Civil matters and the English law in Criminal matters. But the first Parliament of the new Province of Upper Canada passed four Statutes assented to, October 15, 1792, which radically changed the civil law and modified the practice. The first Act being the first law passed by the New Province, recited that the provisions in the Quebec Act of 1774 "that in all matters of controversy relative to property and civil rights, resort should be had to the Laws of Canada", were "manifestly and avowedly intended for the accommodation of His Majesty's Canadian Subjects": and "whereas, since the passing of the Act aforesaid, that part of the late Province of Quebec, now comprehended within the Province of Upper Canada, having become inhabited principally by British Subjects, born and educated in countries where the English Laws were established, and who are unaccustomed to the Laws of Canada, it is inexpedient that the provision aforesaid contained in the said Act of the fourteenth year of his present Majesty, should be continued in this Province".

As has already been pointed out this revolutionary Act by section 3 provided "That from and after the passing of this Act, in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of England as the rule for the decision of the same".

Care however was taken that nothing in the Act should "vary or interfere with . . . . the forms of proceeding in civil actions or the jurisdiction of the

Courts already established". So far the law to be administered by the Court was changed but not the practice or the jurisdiction.

But the second Act went further and introduced from and after December 1, 1792, the English Jury System by providing that "all and every issue and issue of fact, which shall be joined in any action, real, personal or mixed, and brought in any of His Majesty's Courts of Justice within the Province aforesaid, shall be tried and determined by the unanimous verdict of twelve jurors, duly sworn for the trial of such issue or issues, which Jurors shall be summoned and taken conformably to the Law and custom of England". Juries were authorized "in all cases where they shall be so minded" to bring in a special verdict, i. e., a finding of the facts without a verdict for either party.

Even before the Jury system was to come into full play, actions under £10 sterling were to be commenced and tried as those for the higher amount had been tried, if they exceed 40 shillings, Quebec currency (say $8.00).

The Court of Requests

An entirely new Court, the Court of Requests, was provided for action of debt (3) not exceeding 40 shillings, Que. Cy. The Magistrates of every District divided up their District into Divisions (whence these Courts later on became "Division Courts") at the Quarter Sessions—the Justices of the Peace of any Division or any two or more of them sat the first and third Sat-

urday in each month and decided such cases without appeal.

One radical provision appeared in this Act—either party might be a witness, a thing unheard of in English law (4). There are no existing Records of any of these Courts of Requests in Michigan and therefore nothing more will be said of them.

The records of the Court of Common Pleas during this Fifth Period are as follows:

Province Quebec. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption for the said District, on Thursday, the 26th day of January, 1792, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge of said Court.

Court met and adjourned to the 22nd day of March next, to which time all proceedings and causes in Court are continued.

CHAS. SMYTH, *Clerk.*
W. DUMMER POWELL, *J.C.P.*

Province of Upper Canada. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption, on Tuesday, the 21st day of August, 1792.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

UNDER TEN POUNDS STERLING.

Mr. Roe, Attorney for plaintiffs, appeared. Defendant appeared in person. By the Court. Judgment for the sum of Three pounds, fifteen shillings and twopence, Halifax, as by Decln. (Declaration).

William and David Robertson, of Detroit, Merchants and Co-partners, vs. Frederick Arnold.

Mr. Roe, for plaintiff, appeared and prayed that the cause be continued—Ordered.

David Robertson, Attorney to Thos. McCrae. vs. Wm. Searl.

Mr. Roe for plaintiff.
Defendant appeared in person and acknowledged the debt as stated in the declaration. Judgment for Four pounds twelve shillings and tenpence Halifax.

William Robertson vs. John Clearwater.

Defendant made default, being called three times. Mr. Roe for plaintiff, moves the Court to continue this cause ten days—Ordered accordingly.

David Robertson, Attorney to Thos. McCrae, vs. Edward McCarty.

Defendant being called three times made default. Mr. Roe appeared and moved that this cause be continued to the 23rd inst. Ordered accordingly.

David Robertson, Attorney to Thos. McCrae, vs. William Munger.

Defendant being called three times made default. Mr. Roe, for plaintiff, moved that this cause also stand continued to the 23rd inst. Ordered accordingly.

The same vs. Samuel Hall.

Defendant being called three times did not appear. Default. Mr. Roe, for plaintiff, moves the continuation of this cause until the 23rd inst. Ordered.

The same vs. Luke Killing.

William and
David Robertson
vs.
William Searl.

Defendant, called thrice, did not appear. Default. On motion of Mr. Roe, Attorney for plaintiffs, this cause was continued.

David Robertson,
Attorney to
Thos. McCrae,
vs.
Wm. Monforton.

Defendant, thrice called, did not appear. Default. On motion of Mr. Roe, this cause was continued to the 23rd inst.

Mr. Roe appeared for plaintiff.

David Robertson,
Attorney to
Thos. McCrae,
vs.
Frederick Arnold.

Defendant appeared in person and made tender of the sum demanded, without costs, and alleged that he was always ready to pay the sum, but that it was never demanded, nor did he know where his Note was.[5]

By the Court. Judgment for the sum of Five pounds nineteen shillings and four-and-a-half pence, Halifax, without costs.

Mr. Roe for plaintiff.

The same
vs.
Jno. Clearwater.

Judgment for the sum of two pounds three shillings and ninepence, on confession of defendant, with the costs.

The same
vs.
Ebenezer Loveless.

Defendant, being called three times, made default. On motion of Mr. Roe, this cause was continued to the 23rd inst.

Sarah Ainse, Pltff.
vs.
Jno. Clearwater.

Mr. Roe for plaintiff. Judgment for the sum of one pounds seven shillings and six-pence, Halifax, on confession of defendant with costs.

The following causes, no returns being made upon the writ of summons, it is ordered, on motion of Mr. Roe for plaintiffs, that the returns of the several writs be extended to Saturday, the 25th inst.

William and David Robertson, Pltff.
vs.
Ignace Tuot, dit Duval, defendant.

WM. DUMMER POWELL, *J.C.P.*

The Same Plaintiffs vs. J. Bte. Parré, defendant.

The Same vs. Julien Tavernier.

The Same vs. Pierre L'Hyvernois.

Wm. Robertson vs. Louis Bourdeginon.

William Robertson vs. Francois Billiet.

David Robertson vs. Harry Facer.

The Same vs. Ger Hodierne.

The Same vs. Joseph Roe.

Wm. Christie, plaintiff, vs. Pierre Cerá dt. Coquillard.

Sarah Aisne vs. Fran. Latour.

The Same vs. Jordan Avery.

The Same vs. J. Bpte. Campeau.

James McDonell vs. Alexis Cerá dt. Coquillard.

James McDonell vs. John Miller.

Court adjourned to to-morrow.

CHAS. SMYTH, *Clerk.*

Province of Upper Canada.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption, on Wednesday, the 22nd day of August, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge.

William and David Robertson, of Detroit, Merchants and Co-partners, plaintiffs, vs. Isidore Chene, of the same place, Gentleman, defendant.

Mr. Roe, for plaintiffs, appeared and filed declaration.

Defendant being thrice called and not appearing, on motion of Mr. Roe a default is recorded against defendant.

Peter Clark, late of Detroit, but now of Kingston, Esq., plaintiff, vs. Jean Bte. Campeau, of Gross Point, Gentleman, defendant.

Mr. Roe for plaintiffs appeared and filed declaration.

Defendant being thrice called and not appearing, default is recorded against defendant on motion of Mr. Roe.

Court adjourned till to-morrow at 11 o'clock.

CHAS. SMYTH, *Clerk.*

Province of Upper Canada. District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption, on Wednesday, the 23rd day of August, 1792, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge.

Chas. Bellair vs. Andre Derome dt. Decarreaux.

No Return—dismissed.

David Robertson, Attorney, vs. William Munger.

Judgment for the sum of one pound ten shillings and elevenpence halfpenny, Halifax currency, with Costs.

David Robertson, Attorney, vs. Samuel Hall.

Judgment for the sum of fifteen shillings, Halifax, on confession of defendant, with costs.

Same plaintiff vs. Luke Killing, defendant.

Samuel Hall being sworn to declare the truth in this cause says that the defendant delivered him the copy of the summons now filed in Court, and acknowledged the debt demanded and desired this witness to appear in Court and confess judgment.

Judgment for the sum of £2 10s. 11d., Halifax currency, with costs.

The same vs. William Monforton.

Defendant did not appear.

Plaintiff filed defendant's two Notes, which were proved by the testimony of Wm. Duggan.

Judgment for the sum of Eight Pounds Nine Shillings and Twopence, with Costs.

The same vs. Ebenezer Loveless.

Judgment for the sum of five pounds six shillings, Halifax currency, with costs, on testimony of Henry Botsford.

W. Dummer Powell, *J.C.P.*

Court adjourned to-morrow at 11 o'clock.

Chas. Smyth, *Clerk.*

Court of Common Pleas, holden at L'Assomption on Friday, the 24th day of August, 1792, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge.

Court adjourned until to-morrow at eleven o'clock, there being no business before the Court for this day.

Chas. Smyth, *Clerk.*

Wm. Dummer Powell, *J.C.P.*

Province Upper Canada.
District of Hesse.

COURT OF COMMON PLEAS, holden at L'Assomption, on Saturday, the 25th day of August, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge.

CAUSES UNDER TEN POUNDS STERLING.

Wm. Hands
vs.
J. Bte. Laberdy.

Defendant, being thrice called and not appearing, default.

Plaintiff appeared in person, and being sworn to testify the truth says that the amount now produced and filed in Court is just and true.

Whereupon the Court considers that the defendant pay to the plaintiff the said sum of One Pound Five Shillings, with Costs of suit, as by Declaration, it is demanded.

John Askin, Jun., plaintiff,
vs.
J. Bpte. Sancrainte.

Mr. Roe, attorney for plaintiff, appeared and filed declaration.

Defendant being thrice called and not appearing, Mr. Roe moves for default. Ordered.

Schieffelin & Askin, plaintiffs,
vs.
J. Bte. Sancrainte, defendant.

Mr. Roe, attorney for the plaintiffs, filed Declaration.

Defendant being thrice called and not appearing, on motion of Mr. Roe Default is ordered against the defendant.

Wm. Monforton
vs.
Jos. Pernier.

Defendant appeared in person and for cause why he should not be condemned to pay the sum of the note, now filed, says that he is a layman and unlettered, that when he made his mark to the said promissory Note it was not read or explained to him, and that he had

no value for the same. Defendant replies that the said note was read and explained to him in presence of the subscribing witness, and that there is evidence thereof by the payments endorsed on the said note, which payment the defendant acknowledges. Cause continued en délibére.

Wm. Monforton, plaintiff, vs. Fran. LePine, dt Berar.

Defendant appeared in person, and being duly sworn to testify the truth says that he never received sums but at two different times from the plaintiff and acknowledged in part the plaintiff's account. Court considered that he be condemned to pay the sum of fifty-four livres five sols, with costs of suit.[7]

The same plaintiff vs. J. Bte. Fagnon, defendant.

Continued on consent of plaintiff until next adjournment, the defendant being lame and unable to attend the Court.

James McDonell, plaintiff, vs. John Miller, defendant.

Defendant being thrice called and not appearing, default.

Mr. Roe, for plaintiff, produced a witness in this cause, who being duly sworn to declare the truth says be was present when plaintiff presented the account now filed, who paid him something on account and promised to pay the balance at a future time. Judgment for the sum of £2 4s. 11d. with costs.

The same vs. Alexis Cera dt. Coquillard, defendant.

Hugh Heward, being sworn to declare the truth in this cause, says that the defendant acknowledged the debt and at the same time delivered him copy of the summons author-

ising him to appear in Court and confess judgment.

Judgment for the sum of Four Pounds Thirteen Shillings and three halfpence, Halifax, with Costs.

Sarah Ainse, plaintiff, vs. Fran. Latour, defendant.

Defendant thrice called but did not appear.

Mr. Roe, for the plaintiff, filed promissory note and produced Wm. Duggan, who being duly sworn says he saw the defendant make his mark to the said note after it was read to him.

Judgment for the sum of one pound seventeen shillings and sixpence, Halifax, with costs.

The same plaintiff vs. Jordan Avery.

Defendant, thrice called, did not appear.

Mr. Roe, for plaintiff, filed promissory note and produced William Duggan, who being duly sworn says he was present and saw the defendant subscribe his name to the said note.

Judgment for two pounds eighteen shillings and fourpence, Halifax, with costs.

The same plaintiff vs. J. Bte. Campeau.

Defendant, thrice called, did not appear.

Mr. Roe filed defendant's promissory note and produced William Duggan, who being sworn, says he was present and saw the defendant subscribe his name to the said note.

Judgment for two pounds nineteen shillings and ninepence, Halifax, with costs.

Issued. Execution 13th August, 1793, returnable in two months.

Debt	£2	19	9
Costs		1	9
Writ		1	0
	£4	1	6
Bailiff		4	0

David Robertson Attorney to Thos. McCrae, plaintiff, vs. Jos. Roe, defendant.

Defendant being called and not appearing. Default.

Mr. Roe produced Wm. Duggan, who being duly sworn, says that the defendant acknowledged the debt demanded in his presence to be due for three quarters rent of a House from Mr. McCrae.

Judgment for the sum of Nine Pounds Seven Shillings and Sixpence, Halifax, with Costs.

Wm. and David Robertson vs. Ignace Tuat, dt. Duval.

Defendant being called and not appearing. Default.

Mr. Roe, for plaintiffs, produced Charles Moran, who being duly sworn declares that he was present and saw the defendant subscribe his mark to his promissory Note now filed after it was read and explained.

Judgment for the sum of Three Pounds Seventeen Shillings and Sixpence, Halifax, with Costs, including five shillings for the Witness.

Wm. and David Robertson
vs.
J. Bte. Parré, defendant.

Defendant appears in person and acknowledged the sum demanded by the declaration.

Judgment for the sum of Four Pounds Eight shillings and ninepence, with Costs, including five shillings to Witness who was present in Court on Subpœna.

David Robertson, Attorney to Thos. McCrae, plaintiff,
vs.
Gervais Hodiesne, defendant.

Defendant appeared in person.

Judgment on confession of defendant for the sum of three pounds seven shillings and ninepence, Halifax, with costs, including five shillings to a witness who was present in Court on subpœna.

Wm. Robertson, plaintiff,
vs.
Louis Bourdeginon.

Judgment on confession of defendant for the sum of four pounds and twopence halfpenny, Halifax, with costs.

The same plaintiff
vs.
Fran. Billiet, defendant.

Judgment on confession of defendant for the sum of two pounds six shillings and eightpence halfpenny, with costs of suit.

Wm. Christie, plaintiff,
vs.
Pierre Cera dt. Coquillard.

Defendant appeared in person and acknowledged the promissory note now filed, but pleads a set-off against the said note of nine pounds thirteen shillings and ninepence, Halifax, not endorsed thereon.

Cause continued until next adjournment.

Wm. and David Robertson
vs.
Julien Tavernois.

Mr. Heward appeared, and being sworn to testify the truth says that the defendant acknowledged the demand to be just and true in his presence.

Judgment for the sum of eight shillings and eightpence, Halifax, with costs.

David Robertson, Attorney to Thos. McCrae, plaintiff, vs. Harry Facer, defendant.

Defendant being thrice called and not appearing. Default.

Mr. Roe for plaintiff produced William Duggan, who being duly sworn to testify the truth in this Cause, declares that the name of Harry Facer, subscribed to a promissory note now filed in Court, is to the best of his knowledge and belief the proper handwriting of the said Harry Facer, that he is acquainted with the handwriting of Wm. Patterson, and that the subscription "Wm. Patterson," as witness to the said note is of the proper handwriting of the said William, and that he is out of the Jurisdiction of this Court.

Judgment for the sum of Three Pounds three shillings and fivepence, Halifax, with Costs of suit.

Court adjourned until Monday next at 11 o'clock.

CHAS. SMYTH, *Clerk.*
WM. DUMMER POWELL, *J.C.P.*

[The following is in different handwriting —that of William Monforton: the memorandum as to Monforton is in Powell's unmistakable hand. Charles Smyth was an adopted Chief of the Shawnees, and against the instructions of the Commandant he in 1794 with a few others in Detroit joined the

Indians in the campaign against Anthony Wayne. He fell at Fallen Timbers: shot through the knees, contemporary reports say that he was then quartered alive and that in revenge an American officer taken by the Indians was carved by "their scalping knives into pound pieces." See *Correspondence of Lieut. Governor John Graves Simcoe* . . . Toronto, 1925, Vol. 3, pp. 29, 30.]

COURT OF COMMON PLEAS, holden at L'Assomption, this Monday, twenty-seventh of August, 1792, pursuing to adjournment.

Present: William Dummer Powell, Esquire, First Judge of the said Court.

William Monforton, Gentleman, in the absence of Charles Smyth, the Clerk of the said Court, being sworn fourth of July to perform the duty of Clerk deputé for this term before

WM. DUMMER POWELL, *J.C.P.*

William Macomb
vs.
William Groesbeck.

Mr. Roe, for the plaintiff, filed declaration, and the defendant being thrice called and not appearing, default was rendered against him.

James May
vs.
John Williams.
J.C.M.

Mr. Roe, for the plaintiff, filed declaration, and the defendant appears in his proper person.

The declaration being read, the defendant for answer pleads verbally that about the time mentioned in the said Declaration he, the defendant, being commanded by a superior

officer, himself being a mate of one of his Majesty's vessels at Detroit, to receive an anker said to be the King's which Mr. Thomas Reynolds, assistant Commissary at Detroit, would show to him, he, the defendant, with the party of seamen went to a courtyard in Detroit which he since learned belonged to Mr. May's house, and that from thence he took away an iron anker as described in the said declaration. The said Thomas Reynolds pointed out to the defendant as the anker he was sent for, that there was no opposition made to his taking the anker, which the defendant carried to the King's yard, where he left it in charge of naval store-keeper.

The Court ordered the plaintiff to prove his damages on Wednesday next.

William Christy
vs.
Pierre Cera de Coquillard.

The defendant being thrice called and not appearing to sustain the set-off pleaded on admission of his note for balance of which this suit was brought, it is considered by the Court that the defendant pay to the plaintiff the sum of nine pounds one and tenpence, New York currency, equal to five pounds thirteen shillings and sevenpence, one half-penny currency of the Province, with costs.

Issued ex. 13th August, 1793.

Debt	£5	13	7½
Costs		15	8
Exon.		1	0
	£6	10	3½
Bailiff		4	0

Ret. in two months.

Pierre Chene
vs.
Patrick McNiff.

The defendent being thrice Call'd and not appearing his Default his recorded, and it his ordered that this Cause come on to be heard on Wenesday next.[8]

Toussain Chene
vs.
Patrick McNiff.

The defendant being thrice called and not appearing, his default his recorded, and it his ordered that this Cause come on to be heard on Wenesday next.[8]

William Hands
vs.
John Bte. Campeau.

Mr. Roe, for the plaintiff, filed sheriff's return of nulla bona on writ of fieri facias issued the twentieth day of October last, and prays that inasmuch as the defendant has property within the said Sheriff's jurisdiction that a writ and alias of fieri facias be awarded against him. The Court ordered the same accordingly.

Issued al.f.fa. 16th July, 1793. Returnable in six month.[9]

Debt	£20	5	10
Costs	6	8	2
	£26	14	0
Sub Costs		13	6
Writ		5	0

with interest on £20 5s. 10d. from 5th of April, 1786, until paid.

CHAS. SMYTH.

Adjourned to to-morrow at 11 o'clock before noon.

WILL MONFORTON, *Acting Clerk.*
WILLIAM DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, held at L'Assomption, in the District of Hesse, this twenty-eighth day of August, according to the adjournment.

Present: William Dummer Powell, Esquire, First Judge.

The Court stands adjourned until to-morrow, the twenty-ninth instant, at 11 o'clock before noon.

WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, held at Iosomption, this Wenesday, twenty-ninth of August, 1792, pursuing to adjournment.

Present: William Dummer Powell, first Judge of the said Court.

William and David Robertson
vs.
Isidore Chene.

Continued at the prayer of the plaintiff until to-morrow upon the suggestion that the witnesses could not cross the river.

James May
vs.
John Williams.

Continued for the same Reason until to-morrow.

Peter Clerk
vs.
John Bte. Campeau.

Sworn in Court.
W.D.P.

Mr. Wm. Monforton being duly sworn declared that he saw the defendant subscribe the Bond and Obligation now filed in this cause bearing date the 16th Sept., 1786.

Sworn in Court.

WILLIAM MONFORTON.

Judgment for the sum of nineteen pounds eleven shillings and one penny, Halifax currency, with the interest on the principal sum

of twenty-one pounds thirteen shillings, New York currency, from the twentieth of August until paid, and cost of suit.

Toussaint Chene vs. Patrick McNiff. Continued by consent of the parties until to-morrow.

Pierre Chene vs. Patrick McNiff. Continued by consent of the parties until to-morrow.

WILLM MONFORTON, *Acting Clerk.*
WILLIAM DUMMER POWELL.

COURT OF COMMON PLEAS, holding at Lossomption, this tooesday, thirtieth day of August, 1792.

Present: William Dummer Powell, first Judge of the said Court.

In the absence of Charles Smyth, Clerk, occasioned by Indisposition, William Monforton, Gentleman, was sworn faithfully to perform the function of Clerk Deputy for this Term.

W.D.P., *F.J.C.P.*

William and David Robertson vs. Isidore Chene. Judgment for the sum of eleven pounds eight shillings and tenpence with costs.

Issued fi.-fa. 15th Nov., '92. Ret. 1st Court in June next.

Debt	£11	8	10
Costs	6	12	6
	£18	1	2
Writ	5	0	

With interest from 20th August, '92.

C. SMYTH, *Clk.*

James May
vs.
John Williams.

Francois Golin ayant preté Serment dit que dans le mois d'avril, 1791, etant au service de Mr. James May il aidé a tirer de la Rivière un ancre pesant à peu près au mieux de sa Connaissance trois cent trente Livres qu'il a aidé à placer dans la Cour de Mr. May doù il été tiré par le défendeur a ce qu'il a oui dire a son Bourgeois que dans ce tems la le Demandeur n'y avoit pas dautre ancre.

sa
François X Golin.
marque

Hugh Heward being sworn says he has knowledge that the usual price of iron woroth into ankor is at Detroit four shilling York currency per pound, and that he has knowledge that in cases where ankors are lent it is being usual stipulate for payment of three shillings per Pound if lost or not returned.

HUGH HEWARD.

Issued fi.fa. 15th March, '93, ret. first Court in Sept. next.

Debt	£20	0	0
Costs	6	8	2
	£26	8	2
Writ		5	0

Int. from 30th Aug. last.

C. SMYTH.

[The following judgment is in Powell's handwriting.]

This action is in the nature of an action of trespass in the English jurisprudence, with this difference, that in that action Dammages only are Recovered. In this the Laws of Quebec admit the alternative on one Suit. Both Codes equally resist the pretention of any subject to become a Judge in his own House. The Laws of Quebec, founded on those of Rome, resist such an idea so strongly that the question of Right cannot be heard until the voye de fait act of the party or natural trespass be fully Repaired, by putting things *in statu quo* or subjecting the defendant to proportionate fine *ne vi Juris quaeratur quum de Jure Domini sine possessionis,* and the King is not Exempt from this Rule in the present instance. The fact is admitted, the Right of property and possession is not traversed: the Court has nothing to do but pronounce the judgment of law, which if the plaintiff had so required would be simply the restoration of the anchor to the place it was taken from, but as the pleadings stands the Court considers that the defendant do in fourteen days restore the anchor to the plaintiff, or, failing so to do, do pay to the plaintiff his dammage to the amount of twenty pounds, Halifax currency, with his Costs.

Toussaint Chene
vs.
Patrick McNiff.

Judgment for four pounds five shillings and sixpence, New York Currency, with costs.

Judgment for three pounds fifteen shillings and sixpence, Halifax currency, with costs.

Pierre Chene vs. Patrick McNiff.

WILLIAM MONFORTON, *Acting Clerk.*
WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption, for the District of Hesse, this thirteenth day of August, by adjournment.

Present: William Dummer Powell, first Judge.

William Monforton swore faithfully to perform the functions of Clerk deputé in the absence of Charles Smyth, indisposed.

W. D. P.

COURT OF COMMON PLEAS, holden at L'Assomption, this fryday, 31st day of August, 1792.

Present: William Dummer Powell, first Judge of the first Court.

The parties appearing, the Cause is continued by consent.

James Turner vs. James May.

WILLIAM MONFORTON, *Acting Clerk.*

The Court having received the Testimony of Joseph Pouget as to the Subscription of the Note which proves the assent of the Defendant, the Court considers that the plaintiff do recover of the defendant the sum of Ten pounds, Quebec currency, with Costs of Suit.

Wm. Monforton, plaintiff, vs. Jean Bpte. Faineaul, defendant.

William Monforton vs. Joseph Perrier dit Vadeboncoeur.

Judgment on his Note confessed for nine pounds seven shillings and eightpence, Currency of the Province, with Costs.

W. D. Powell.

Adjourned to Saturday, 11 o'clock.

Court of Common Pleas, holding this first of Semptember.

Present: William Dummer Powell, first Judge of the said Court.

William Monforton sworn faithfully to perform the Functions of Clerk Deputè *pro hâc vice*.

W. D. P.

William and David Robertson vs. Edward McCarty.

Upon the note bearing datè the twenty-first August, 1790, now filed and proved by William Duggan, the Court considers that the plaintiff do recover from the defendant the sum of two pounds eight shillings and one penny halfpenny, Halifax currency, with costs.

John Askin, Senior, vs. Jean Bpte. Sanscrainte.

The defendant being called and not appearing, the plaintiff prays that his Default may be recorded and for their profit therein suggesting to the Court that the defendant was an Indian trader in the service of the plaintiff, and being by him intrusted with merchandise for traffic did convert to his own use sundry articles as per account filed, the several items of which the defendant acknowledged to the plaintiffs at divers times and required of them to charge the amount thereof to his debit, by

means whereof the plaintiff is utterly deprived of any Legal testimony to entitle them to have just advantage from the default of the defendant to appear to answer this suit, but by referring his said demand to the decisive oath of the defendant agreeable to the law and usage of the custom of Paris, prays that a Rule be made on the defendant to appear in his proper person before this Court on Tuesday, the fourth inst., at nine of the clock before noon, to purge himself by his decisive oath from the demand of the plaintiff, failing which the said account filed shall be taken and held to be Confessed and acknowledged.

Court granted and ordered that the same be served on the person of Defendant.[10]

Shieffeling and Askin
vs.
Jean Bpte. Sanscrainte.

The defendant, being thrice cold and not appearing, the plaintiffs pray his default may be recorded and for their profit, therein suggesting to the Court that the defendant was an Indian trader in the service of the plaintiffs, and being by them intrusted with Merchandise for traffic, did convert to his own use sundry articles as per account filed, the several Items of which the defendant acknowledged to the plaintiffs at divers times and required of them to charge the amount thereof to his debit, by means whereof the plaintiffs are utterly deprived of any legal testimony to entitle them to their just advantage from the default of the defendant to appear to answer this suit, but by referring their said demand to the decisive oath of the defendant agreeable to the

law and usage of the custom of Paris, pray that a writ be made on the defendant to appear in his proper person before this Court, Tuesday, the fourth inst., at nine of the clock before noon, to purge himself by his decisive oath from the Demand of the plaintiffs, failing which the said account filed shall be taken and held to be confessed and acknowledged.

Court grant and order that the same be served on the person of the defendant.[10]

Adjourned to 3rd day of September.

WILLIAM MONFORTON, *Acting Clerk.*

COURT OF COMMON PLEAS, held at L'Assomption, in the District of Hesse, this third day of September, 1792.

Present: William Dummer Powell, first Judge of said Court.

George Lieth and William Thorn.

Mr. Roe, for the plaintiff, filed return of fiery facias, the defendant being thrice called and not appearing, it is ordered that a writ of fiery facias do issue for satisfaction, so being of record, together with the costs accruing on the present application.[11]

James Turner and James May.

Action dismissed.

William Macomb, &c. and William Grossbeck.

The defendant being thrice called and not appearing the Default is Recorded.

Adjourned for to-morrow at nine of the clock.

COURT OF COMMON PLEAS, held at lossomption, in the District of Hesse, this fourth day of September.

Present: William Dummer Powell, first Judge of said Court.

Jonathan Shieffeling and John Askin, Junior vs. Jean Bte. Sans-crainte.

The defendant being thrice called and not appearing, agreeable to the return of the account now filed and proved to have been served upon him, this cause is continued to to-morrow.

WILLIAM MONFORTON, *Acting Clerk.*

John Askin, Junior, vs. Jean Bte. Sans-crainte.

The same rule.

Adjourned for to-morrow.

COURT OF COMMON PLEAS, held at L'Assomption, in the District of Hesse, this 5th of September, 1792.

Present: William Dummer Powell, first Judge of said Court.

John Askin, Junior, vs. Jean Bte. Sans-crainte.

Louis Géniéz ayant preté Serment sur les St. Evangilles declare qu'il ce trouva dans la Maison de Mr. Jean Askin avec le defendeur Jean Bapt. Sancrainte et Mr. Roe, L'avocas, qui presenta au dit Sancrainte deux Comptes, avec le defendeur s'expliquent que c'estoit les Comptes de Mr. Jean Askin et de la Société de Jean Askin et Shiefeling que Mr. Roe en presence du dit temoin en fit la lecture article par article et demanda au defendeur s'il y trouvoit quelque erreur il repondit que non excepté L'omission d'une meule qu'il disoit

avoir fourni que la dessus Mr. Roe lui dit qu'il fallait passer de l'autre Bord pour Reconnoitre les dits Comptes devans la Cour ce que le def'dr. Refusa disant pour raison pour quoi voulez vous que j'y aille vu que je ne vie pas ce que je dois.

Louis Giniez.

Mr. Roe, being sworn, says that the account filed in Court upon which the declaration in this Cause is grounded is the only account which the witness presented to the defendeur from John Askin, Junior, in presence of Louis Genie.

W. Roe.

Judgment for the amount of twenty-eight pounds nineteen shillings and eightpence one halfpenny, hallifax currency, with costs.

Shieffeling and Askin vs. Jean Bte. Sancrainte.

Louis Genie ayant preté Serment sur les Sts. Evangilles declare qu'il se trouva dans la maison de Mr. Jean Askin avec le defendeur Jean Bapt. San Crainte et Mr. Roe L'avocat qui presenta au dit Jean Bte. Sancraint deux compte avec le defendeur sexpliquant que cetoit les comptes de Mr. Jean Askin et de la société de Jean Askin et Shiefeling que Mr. Roe en presence du dit temoin en fit la Lecture article par article et demanda au Defendeur s'il y trouvoit, quelque Erreur il repondit que non excepté L'omission d'une meule qu'il dissoit avoir fourni que la dessus Mr. Roe lui dit qu'il faloit passer de Lautre Bord pour Reconnoitre les dits compte devant la Cour ce que

le Def'dr. Refusa disant pour raison pour quoi vouléz vous que j'y aille vu que je ne nie pas Ce que je dois.

LOUIS GINIEZ.

Mr. Roe, being sworn, says that the account filed in Court upon which the declaration in this cause is grounded is the only account which the witness have presented to the defendant from the plaintiffs in presence of Louis Genie.

W. ROE.

Judgment for the sum of Seventy-nine Pounds sixteen shillings and one peny, equal to forty-nine pounds seventeen shillings and sixpence halfpenny of Lawful Money of the late Province of Quebec, with interest and Costs of suit.

WILLIAM MONFORTON, *Acting Clerk.*

[NOTE: The Minutes of the Court from the 5th September, 1792, to the 12th of September, 1793, are missing.]

SEPTEMBER TERM.
33rd Geo. III.

COURT OF COMMON PLEAS, holden at the house of Alexis Maisonville, Esq., in the Parish of L'ossomption, in the Western District and Province of upper Canada, this twelfth day of September, in the year of our Lord one thousand seven hundred and ninety-three.

Present: the honorable William Dummer Powel, first Judge of said Court.

Read the Commission of the first Judge with the third clause of the third chapter of the twenty-nineth of George the Third, and the fourth and fift clauses of the Eighth chapter of the thirty-second George the Third.[12]

OPENED THE COURT.

Shieffelin and Askin
vs.
Joseph Guidet.

Mr. Roe, attorney for the plaintiffs, filed the Declaration and Summones returned by the Sheriff in this cause, when the defendant being thrice called and not appearing it is ordered that his default be recorded accordingly.

John McGregor
vs.
Francois dit Prosper Tibaut.

Mr. Roe, attorney for the plaintiff, filed the Declaration and Sommones returned by the Sheriff in this Cause, when the defendant being thrice called and not appearing it is ordered that his default be recorded accordingly.

John Askin, Junior,
vs.
Jacob Young.

Mr. Roe filed the Declaration and Sommones returned by the Sheriff in this Cause and the defendant appeared in person and confess the Det and the plaintiff's Demand is just, upon which voluntary Confession it is considered that the plaintiff do recover from the defendant the said sum, being three pound sixteen shillings and threepence, Current Money of the Province, with Cost.

John McGregor
vs.
James Urquart.

Mr. Roe, attorney for the plaintiff, filed the Declaration and Sommones returned by the Sheriff in this cause, when the defendant being thrice called and not appearing it is ordered that his Default be Recorded accordingly.

George Meldrum
and Park
vs.
George Johns.

Mr. Roe, attorney for the plaintiffs, filed the Declaration and Sommones returned by the Sheriff on this cause, when the defendant being thrice colled and not appearing it is ordered his Default be Recorded accordingly.

Shieffeling &
Askin
vs.
Jean Baptiste
Sanscrainte.

The Sheriff returned a writ of fieri facius issued in this Cause, with the opposition of Chas. Chene annexed. Mr. Roe, attorney for the plaintiff, in default of the opponent's appearance moved that said Charles Chene be ordered to appear in this Court on the last day of the present term to Show Cause why the Sheriff should not proceed to the seal of the property seized under the said Writ of Execution towards satisfaction of the judgment obtained by the plaintiff—Ordered accordingly.

William Macomb
vs.
William Groesbeck.

In consequence of a Commission in the nature of a Commission Rogatoire issued from this Court the tenth day of September last requiring Daniel Campbell, John Robertson and John Stevenson, of Schenectady, in the united States, Esquires, to take the answers of Mathew Lound, of said Schenetady, to certain interrogatorys thereunto annexed, the said answers so taken by the said Commis-

sioners were this day returned under their Seals into this Court—Whereupon Mr. Roe, attorney for the plaintiff, moved that the said answers be filed among the records and taken as Legal Testimony in this cause.

By the Court: The Rogatory Commission having issued by virtue of an Express Clause in an Ordinance of the late Province of Quebec, virtually reappealed by the fifth Clause of the first Chapter of the first statutes of upper Canada and the which statute the proceedings of this Court are now directed, Mr. Roe can take nothing by his motion.[13]

Court of Common Pleas adjourned to the sixteenth day of September, one thousand seven hundred and ninety-three.

WILLIAM MONFORTON, *Acting Clerk.*

Rules of Practice ordered by the Honourable William D. Powell, first Judge of His Majesty's Court of Common Pleas for the Western District, to be Intered in the minutes of said Court.

That there be four Return days each term, the first, fourth, eighth Inclusive and last day.

That all Pleas be filed on the third Day after the Return, Replication on the third Day after the Plea, and that three days' notice be given of Trial.

That in Default of Plea being filed on the third day a Peremptory Rule be had to file Plea in the Clerk's office within twenty-four

hours after service of such Rule, and the same to extend to Replication.

That all Notices and Service of Peremptory Rules be made at the Clerk of the Court's office.[14]

COURT OF COMMON PLEAS, holden at lossomption, the sixteenth day of September, one thousand seven hundred and ninety-three.

Present: The Honourable William D. Powell, first Judge of said Court.

Angus McIntosh vs. Bernard Campau.

Mr. Roe, for the plaintiff, filed the Declaration and Summonce returned by the Sheriff in this Cause, when the defendant being thrice called and not appearing it is ordered his Default be Recorded accordingly.

Angus McIntosh vs. Philipp Belanger.

Mr. Roe, for the plaintiff, filed the Declaration returned by the Sheriff, the defendant appeared in person when Mr. Roe praid the Court to ament the Declaration.

William Macomb vs. William Forsyth.

Mr. Roe, for the plaintiff, filed the Declaration. The defendant appeared in person, whereupon prior to any plea being filed in this cause, Mr. Roe praid leave to amend his declaration so that in lieu of his present conclusions the same may stand amended for a sum of three hundred and sixty-one pounds, eighteen shillings and twopence and happenny Currency of the Province.

Ordered accordingly—whereupon the defendant appearing and acknowledged to be indebted by the deed now filed and Sealed by

him in a sum of two hundred and sixty-four pounds, eighteen shillings, twopence, a penny Currency of the Province, with Interest to be computed from the thirteenth day of May last, on which confession and motion of the plaintiff the Court order that judgment be recorded accordingly.

By the Court fi-fa issued 1st Jan., '94. Ret. in six months.

Debt	£261	18	2½
Costs	8	14	6
	£270	12	8½
Writ		5	0

With Interest from the 13th May, 1793, until paid. C. S.

Gr. McGregor vs. Joseph Pouget.

Mr. Roe, for plaintiff, filed the Declaration: the defendant appears in person and acknowledged to be indebted to the plaintiff in the sum of two hundred pounds, nine shillings, ninepence and a Peny Currency of this Province, it is considered by the Court that the plaintiff do recover from the defendant the said sum with interest and cost.

COURT OF COMMON PLEAS, Holden at lossomption, the nineteenth of September, one thousand seven hundred and ninety-three.

Present: The Honourable William D. Powell, first Judge of said Court.

George McDougall vs. Jacques Chauvin.

Mr. Roe, attorney for the plaintiff, filed the Declaration and Sommonce returned by the Sheriff, when the defendant being thrice called

and not appearring, it is ordered that his Default be Recorded accordingly.

Mr. Roe, attorney for the plaintiff, filed the Declaration and Summonce returned by the Sheriff, when the defendant being thrice called and not appearing, it is ordered that his Default be Recorded accordingly.

George McDougall
vs.
Louis Burlieu.

Mr. Roe, attorney for the plaintiff, mouved that the defendant be called and on his Default of the twelfth instant, when the defendant being again thrice called and not appearing it is ordered that this second default be Recorded accordingly, whereupon Mr. Roe, for the plaintiff, praid for Judgment and that a writ of Inquiry do issue to the Sheriff to ascertain the damages sustained by the plaintiff in this suit.[15]

John McGregor
vs.
James Urquhart.

Granted. Returnable the last day of the term.

By the Court.

Mr. Roe, attorney for the plaintiff, mouved that the defendant be called on his default of the twelfth instant, when the defendant being again thrice called and not appearing it is ordered that this Second Default be Recordered accordingly, whereupon Mr. Roe for the plaintiff praid for Judgment and that a writ of Inquiry do issue to the Sheriff to ascertain the damages sustained by the plaintiff in this suit.[15]

Meldrum & Park
vs.
George Johns.

By the Court—Granted.

Continued to munday next by Consent of parties.

Schiefelin & Askin
vs.
Joseph Gaudet.

COURT OF COMMON PLEAS, holden at lossomption, this twenty-third of September, 1793.

Present: The Honourable William D. Powell, first Judge of said Court.

James Allen
vs.
George Jacob and
Alexis Labute.

Mr. Roe, attorney for the plaintiff, filed the Declaration and Summonce returned by the Sheriff when the defendants being thrice called and not appearing it is ordered that their default be Recorded accordingly.

Jonathan
Shieffelin
and John Askin
vs.
Joseph Gaudet.

The defendant having appeared in person according to the Rule of the last Court day and there asked what he hath to say why judgment should not be Intered against him agreeable to the plaintiff's demand and acknowledges the debt of twenty-nine pounds twelve shillings, New York Currency, to be justly due to the plaintiffs as testified by his Note, dated at Detroit the twentieth day of July, 1790, filed in this cause and shown to him, wherefore it is considered that the plaintiffs do recover of defendant, the said sum being of the money of the Province, Eighteen pounds, Ten shillings, together with the Cost to be taxed.

John McGregor
vs.
James Urquard.

Mr. Roe, for the plaintiff, informed the Court that on the nineteenth instant a Writ of Inquiry issued on this Cause and prays the same may be Supersided, and that the Confession of the Debt by the defendant now present in Court be Recorded.

By the Court: Ordered. Whereupon the

said James Urquart came in person in the Court and his note bearing date the fifteenth november, 1788, promising to pay to the plaintiff or order one hundred and fifty-nine pounds, eighteen shillings, being exhibited to him he acknowledges the same to having been writen and Subscribed by him Confessing the said Debt to be justly due and releasing all errors in the proceedings in this cause, whereupon it is consider'd that the plaintiff do recover from the defendant the said sum and with Costs to be taxed.

Angus McIntosh vs. Philipp Belanger.

The defendant having filed is Plea in the office, and the plaintiff by his attorney having Replied praing the Issue now Raised might be Inquired of, when the defendant did the like, whereupon it is ordered that a venire do issue returnable on the first day of the Ensuing term.

COURT OF COMMON PLEAS, holden at lossomption, this 26th of September, 1793.

Present: The Honourable W. D. Powell, first Judge of said Court.

George McDougall vs. Jacques Chauvin.

Mr. Roe, attorney for the plaintiff, moved that the defendant be called on his default of the nineteenth instant, when the defendant being again thrice colled and not appearing, it is ordered that this Second Default be Recorded accordingly, whereupon Mr. Roe, for the plaintiff, praid for Judgment and that a Writ of Inquiry do issue to the Sheriff to

ascertain the damages sustained by the plaintiff in this suit, returnable the 30th instant.

By Court—Granted.

George McDugall vs. Louis Beaulieu.

Mr. Roe, attorney for the plaintiff, moved that the defendant being called on his default of the nineteenth instant, when the defendant being again thrice called and not appearing, it is ordered that this Second Default be Recorded accordingly, whereupon Mr. Roe, for the plaintiff, praid for Judgment and that a Writ of Inquiry do issue to the Sheriff to ascertain the Damages sustained by the plaintiff in this suit, returnable the 30th Instant.

By the Court—Granted.

Court of Common Pleas, holden at L'Assomption, this 30th day of September, 1793.

Present: The Honourable W. D. Powell, first Judge of said Court.

Meldrum & Park vs. George Johns.

The Sheriff returned the writ of Inquiry with an Inquisition annexed.

By the Court—it is therefore considered that the plaintiffs recover from the defendant damages by the said jury assesed to the amount of Eleven pounds, sixteen shillings and threepence, Currency of the Province, with their costs, to be taxed.

Fi-fa issued 14th Novr., '93. Ret. April.

Debt	£11	16	3
Costs	7	16	5
	£19	12	8
Writ		5	0

Interest from Jud(gment)

C. SMYTH.

George McDugall vs. Jacques Chauvin.

The Sheriff returned the Writ of Inquiry with an Inquisition annexed.

By the Court—it is considered that the plaintiff recover from the defendant damages by the jury assessed to the amount of fourteen pounds, five shillings and sixpence halfpenny, currency of the Province, with his Cost to be taxed.

Fi-fa issued 14th Novr., '93. Ret. April.

Debt	£14	5	6½
Costs	7	16	5
	£22	1	11½
Writ		5	0

Interest from day of judgment.

C. SMYTH, *Clerk.*

George McDugall vs. Louis Beaulieu.

The Sheriff returned the Writ of Inquiry with an Inquisition annexed.

By the Court—it is considered that the plaintiff recover from the defendant damages by the jury assessed to the amount of four pounds, eighteen shillings and sevenpence,

Currency of the Province, with his cost to be taxed.

Fi-fa issued 14th Novr., '93.	Ret. in April.
Debt	£4 18 7
Costs	7 16 5
	£12 15 0
Writ	5 0

With Interest from date of judgment.

C. S.

James Allan
vs.
George Jacob and Alexis Labute.

George Jacobs, one of the defendants, appeared in person and praid that the Default entered against him on the 23rd Instant might be taken off so as to plead to the action.

By the Court—Ordered.

Mr. Jacob filed his Play and acknowledged the Seal to the bond now produced.

The other defendant, Alexis Labute, being thrice called and not appearing, it is ordered that his Default be Recorded accordingly, whereupon Mr. Roe, attorney for the plaintiff, prayd that Writ of Inquiry do issue to Sheriff to ascertain the damages sustained by the plaintiff in this suit.

By the Court—the Court will advise.

Shieffelin and Askin
vs.
Jean Bpt. Sancrainte.

Upon the Sheriff's Return on the writ of Execution filed in this Cause, the Court consider that the return Day of the said writ be extended for three month, and that the same writ be delivered to the Sheriff.

The Court adjourned to the 1st January next ensuing.

[Now appears a new hand, literate and wholly legible.]

JANUARY TERM.

34th Geo. III.

COURT OF COMMON PLEAS, holden at L'Assomption, on Wednesday, the first day of January, 1794.

Present, the Honourable William Dummer Powell, Esq., first Judge of said Court.

Wm. Forsith vs. Mathew Elliott. Ex. a.

Sheriff Returned Writ of Summons and defendant being called, David Cowan appeared and filed defendant's Letter of Attorney, and on Motion Cause stands over until the regular time for pleading.

Angus McIntosh vs. Israel Ruland.

Sheriff Returned Writ of Summons and defendant being thrice called and not appearing, on motion of Mr. Roe, Counsel for the plaintiff, Default is Recorded against the defendant and eight days is allowed for defendant's appearance.

Schieffelin and Askin vs. John Askin, Esq.

Sheriff Returned Writ of Summons and defendant being thrice called and not appearing, on motion of Mr. Roe, counsel for the

plaintiff, Default is Recorded against the defendant and eight days allowed for his appearance.

Jonathan Schieffelin vs. John Askin, Esq.

Sheriff Returned Writ of Summons and defendant being thrice called and not appearing, on motion of Mr. Roe, counsel for the plaintiff, Default is Recorded against the defendant and eight days allowed for his appearance.

John Bte. L'Arch vs. Gabriel Hanault.

Sheriff Returned *Capias ad Res,* and on motion of Mr. Roe, It is ordered that the Sheriff do bring up the body of the defendant in three days.[16]

Herman Eberts vs. Jean Guilbeau.

Affidavits above ten pounds sterling.

Sheriff Returned *Capias ad Res,* whereupon personally appearing in Court, The Honorable Jacques Baby, Esquire, and Francois Baby, Esquire, both of Detroit, and acknowledged themselves to owe unto the plaintiff, Herman Eberts, the sum of twenty-four pounds, fifteen shillings, Currency of the Province, jointly and severally on Condition that the defendant shall pay the Costs and condemnation awarded by the Court unto the plaintiff, or that he shall surrender himself a prisoner, or that they will pay it for him.

Acknowledged before me,
WM. DUMMER POWELL.

Ex. A.

The defendant being called appeared by his Attorney, The Honorable Jacques Baby, who filed Letter of Attorney and called upon

Francois Baby, Esquire, to prove the Execution thereof, who being sworn deposes that he was present and saw the defendant Execute the same as his act and Deed.[17]

Meldrum & Park
vs.
Jacques Burel.

Sheriff returned Ci. Co. on Writ now filed in Court, and on Motion of Mr. Roe, It is ordered that the Sheriff do bring up the body of the defendant in three days.[18]

Wm. Hands
vs.
Jean Bte.
Rheaume.

Mr. Roe, in behalf of the plaintiff, states to the Court that the Sheriff's officer, conveying the process for service in this cause had met with an accident, which prevented the Sheriff from returning it on this day agreeable to the tenor thereof, and prays that the said return be extended to the first day of the ensuing Term, and the Sheriff being in Court informed the Court of the truth of the premises—It is ordered by the Court accordingly.

Ant. Dufresne
vs.
Charles
Drouillard.

Mr. Roe upon same reason moves for the like Rule.
Granted.

Wm. Park
vs.
Francois Billet.

Mr. Roe moves same Rule on like reason.
Granted.

Meldrum & Park
vs.
Joseph L'Enfant.

Mr. Roe upon the same reason moves for the like Rule.
Granted.

James Allan
vs.
Geo. Jacob and
Alexis LeBute.

The defendant, Alexis LeBute, appeared and prayed default against him be taken off,

which being ordered and he acknowledging the Bond filed in this Cause to be his proper Act and Deed, it is considered by the Court, on motion of Mr. Roe, the said Alexis shewing nothing to the contrary, that the plaintiff do Recover from the defendants the sum of Sixty-two pounds, ten shillings, currency, with interest from the first of January, one thousand seven hundred and ninety-two, with Costs of suit.

Court adjourned to Saturday, the 4th instant.

CHS. SMYTH.

PRO UP CAN WEST DISTRICT

COURT COMMON PLEAS, holden at L'Assomption, on Saturday, 4th January, 1794, according to adjournment.

Present, the Honourable William Dummer Powell, Esquire, first Judge.

Meldrum & Park vs. Thos. Clark.

The Sheriff Returned Writ of Summons. Defendant appeared in person, and having prayed oyer of the Covenant, which was read to him in Court for answer to the plaintiff's Declaration, says that he has not neglected anything which by the said Covenant he Convenanted to do, but hath performed all the several Engagements and therefore is not indebted in the said sum of one hundred and ninety pounds, Currency, or in any part thereof.[19]

Meldrum & Park vs. Jacques Burrel.

On Capias against the said defendant, Jacques Burrel, of Detroit, for the sum of

two hundred and fifty pounds, Currency, at the suit of the said plaintiffs. Affidavit £244 16s. 3d. Bail perfected in court, John McGregor, of Detroit, Merchant, and Mathew Dalson, of the same place, Innkeeper. Each of the bail £250.

Defendant not appearing Default is Recorded.

Defendant is surrendered by his Bail before plea pleaded this 14th March, 1794. Debt sworn to £244 16s. 3d.

W. D. POWELL, *J.C.P.*

J. Bte. L'Arch
vs.
Gabriel Hunault.

Mr. Roe, for plaintiff, prays that the Rule made in this Cause on Sheriff to bring up the defendant's body be extended to Wednesday next.

Granted.

Herman Eberts
vs.
Guilbeau.

Peremptory Rule to Plead on Wednesday next.

Wm. Forsyth
vs.
Mathew Elliott.
filed Ex. b.

David Cowan, Attorney by Procuration to defendant, appeared and proved Letter of Attorney. Filed Affidavit and Motion for continuance until next Term, whereupon the Court considers that the defendant have time to plead until the first day of said Term.

Schieffelin and
Askin
vs.
John Askin, Esq.

Letter of Attorney filed and proved by Robert Stevens, one of the subscribing witnesses.

Ex. a.

William Harffy, Esq., attorney by Procuration to the defendant, moves the Court that the default of last court day be taken off the defendant, and that he be allowed to enter his appearance—allowed by the Court on payment of Costs.

Ex. b.

Defendant's attorney filed affidavit, and thereupon moves the Court to continue this action until the first return day of July Term next. Court will consider and the parties given to the next adjournment.

Jonathan Schieffelin
vs.
John Askin, Esq.

Wm. Harffy, attorney by Procuration to the defendant, moves similar Rule to the forgoing, whereupon the Court orders Default to be taken off on payment of Costs.

Ex a.

Defendant's attorney filed affidavit, and thereupon moves the Court to continue this action until the first return day of July Term.

The Court will consider and parties given to next adjournment.

The Court adjourned till Wednesday, the 8th instant.

CHS. SMYTH, *Clerk.*

PRO
UP CANADA.
WEST
DISTRICT.

COURT COMMON PLEAS, holden at L'Assomption, 8th January, 1794.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge.

Chs. Smyth
vs.
Wm. Groesbeck.

Sheriff filed Returned writ. Defendant called did not appear. Default.

W. D. P.

Angus McIntosh vs. Israel Roland.

On motion of Mr. Roe, defendant called and not appearing, It is ordered that Default be entered and that a Writ of Enquiry do issue, Returnable the last day of Term.

Issued Ret. 17th.

L'Arch vs. Hunault.

On Capias against defendant for the sum of Twenty-five pounds, Currency, at the suit of the plaintiff.

Affidavit above £10 sterling.

2 Rules.

Bail perfected in court. John McGregor, of Detroit, Merchant, and James May of the same place, Merchant.

Each of the bail of £18 15s.

Ex. b.

Letter of Attorney to John Askin, Esquire, filed and proved by Robert Woolsey, one of the subscribing witnesses. Defendant entered appearance.

Three days for Plea allowed.

Rule on Sheriff to bring up body filed. Ex. a.

Meldrum & Park vs. Jacques Burel.

Letter of Attorney filed and proved by Salmon Godrich, one of the subscribing witnesses.

James May, attorney by Procuration to defendant, moves that Default of last court day be taken off, and that he be allowed to enter appearance for defendant. Granted on payment of Costs.

Ex. b.

Defendant's attorney filed affidavit and moved the Court to continue this action until next Term, and Mr. Roe, stating that the defendant ought not to have the time prayed

for, It is ordered that the defendant do plead in three days.

Oyer prayed for and granted.

Eberts
vs.
Guilbeau.

Mr. Roe filed Return of Rule of last court day, Ex. b., and on motion it is ordered that a Writ of Enquiry do issue Returnable last day of Term.

Issued ret. 17th.

C. S.

Schieffelin and Askin
vs.
John Askin.

Mr. Roe further continued on motion till next court day.

Jon. Schieffelin
vs.
John Askin.

Continued as above.

Meldrum & Park
Thos. Clark.

Ex. a.

Mr. Roe filed Replication and moves for Venire returnable on Monday next. Ordered. Return extended on motion of the plaintiff's attorney until Wednesday next.

Court adjourned till Saturday next, 11th inst.

CHAS. SMYTH, *Clerk.*

PRO
UP CAN
WEST
DIST

COURT COMMON PLEAS, holden at L'Assomption, Saturday, 11th January, 1794, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge.

Meldrum & Park
vs.
Thos. Clark.

Discontinued on motion of plaintiff's attorney.

Mr. Roe filed affidavit. Ex. continued till next Court day.

Schieffelin and Askin
vs.
John Askin.

Mr. Roe filed affidavit. Ex. continued till next Court day.

Schieffelin
vs.
John Askin.

Mr. Roe Moved for Plea. Defendant's attorney filed Affidavit and Motion to continue until July Term, and on suggestion of Mr. Roe continued until next Court day, having matter to oppose why the defendant's motion ought not to be granted.

Meldrum & Park
vs.
Burel.
Ex. c.

Defendant filed Plea, continued until next court day.

Jean Bapte. L'Arch
vs.
Gabriel Hunault.

Court adjourned till Wednesday, 15th instant.

CHS. SMYTH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'Assomption, Wednesday, 15th January, 1794, pursuant to adjournment.

PRO
UP CAN
WEST DISTRICT.
15 January, 1794.

Present: The Honourable William Dummer Powell, Esq., etc., etc.

Defendant called does not appear and his former default being read, on motion by Mr. Roe, Judgment for plaintiff, and that a writ do issue commanding the Sheriff to enquire of the plaintiff's Damages in this plea, returnable first day of next Term.

Chas. Smyth
vs.
Wm. Groesbeck.

Exon. issued 4th Apr. 1794, returnable Sept. Term.

Debt	£20 13 11
Costs	7 17 8
	£28 11 7
Writ	5 0

With interest on £20 13s. 11d., from date of judgment.

W. D. Powell, *J.C.P.*[20]

[The above entry is wholly in Powell's handwriting.]

Schieffelin and Askin
vs.
John Askin.

Mr. Roe of Counsel for the plaintiffs, moves that in consequence of the cause shown in the affidavit of the plaintiffs now filed and agreeable to the rules for regulating the practice in this Court that a rule be made that the defendant do plead to this suit in three days.

By the Court: Time is given to the Defendant till the first day of next Term to file his Plea in this Cause, subject to further extension if at that day he shall certify the Court that he has used all reasonable means to procure legal advice for his plea, subject also to this further condition, that he consent that in case of Judgment against him in this cause, Legal Interest upon such sum as may be adjudged to the plaintiff shall commence from the last day of this Term.

The defendant's attorney, present in court, accepts of the Condition of the Rule for continuance.

Defendant filed Letter of Attorney, proved in court. Ex.

Mr. Roe, in consequence of the Rule made, prays the Court that good and sufficient security may be given to answer the judgment of the Court. Over-Ruled.

Jonathan Schieffelin vs. John Askin.

Mr. Roe moves similar Rule in this Cause.

By the Court: Peremptory Rule on defendant to Plead first day of next Term.

Defendant files Letter of Attorney proved in court, marked Exhibit.

Issued Rule 12th March, '94.

Angus McIntosh vs. Israel Ruland.

Petition of Ann Ruland, wife of Defendant, filed.

The Court, in view of Declaration and Writ of Summons, order Stay of Execution.

Meldrum & Park vs. Burel.

On consent of parties Cause continued till next term.

L'Arch vs. Hunault.

Continued for replication.

Court adjourned till Friday, 17th instant.

CHS. SMYTH, *Clerk.*

PRO UP CAN WEST DIST

COURT OF COMMON PLEAS, L'Assomption, Friday, 17th January, 1794, according to adjournment.

Present: Honourable Wm. Dummer Powell, Esquire, first Judge, etc., etc.

Angus McIntosh vs. Israel Ruland.

Discontinued on Motion of Mr. Roe for plaintiff.

L'Arch vs. Hunault.

Continued, on Motion of Mr. Roe, till next term for replication.

Court adjourned till March Term next.

CHAS. SMYTH.

MARCH TERM.
34th Geo. III.

PRO UP CAN WEST DIST

COURT OF COMMON PLEAS, holden at L'Assomption, on Friday, the fourteenth day of March, 1794.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court, etc., etc.

Meldrum & Park vs. Francois Billette.

Sheriff returned Writ of Summons. Defendant called, does not appear. Default, on Motion of Mr. Roe, of counsel for plaintiffs.

Wm. Hands vs. J. Bte. Rheaume.

Sheriff returned writ of summons. Defendant called, does not appear. On Motion of Mr. Roe, plaintiff's attorney, Default is recorded.

Antoine Dufresne vs. Charles Drouillard.

Sheriff returned writ. Defendant called. Default. Mr. Roe, for plaintiff, prays Default—Ordered.

Charles Smyth vs. Wm. Groesbeck.

The writ of Enquiry of Damages awarded in this Cause on Judgment by default, being this day returned by the Sheriff, and the plaintiff being Clerk of the Court in office, it is considered by the Court that the plaintiff,

Charles Smyth, Esquire, do recover of the defendant, William Groesbeck, merchant, the damages found against him by the Jury, summoned on the said Writ, amounting to twenty pounds, thirteen shillings and elevenpence, together with his Costs to be taxed by the Court.

WM. DUMMER POWELL, *J.C.P.*

[The above entry is wholly in Powell's handwriting.]

John Askin, Esq., vs. Pierre Solo.

Sheriff returned Writ and Summons.

Defendant personally appears, and for answer to the plaintiff's Declaration, says that he is not indebted to the plaintiff in the sum demanded, or any other sum, and Mr. Roe. of counsel for the plaintiff, says that he is indebted in manner and form and prays that it may be enquired of.

On Consent of parties, It is ordered that George McDougall, of Detroit, Merchant, and George Sharpe, Esquire, of the same place, Merchant, mutually chosen by the said parties, be named Arbitrators in this Cause, and that the said Arbitrators do give in their Award in Writing, returnable in eight days.

John Askin, Esq., vs. Alexis Solo.

Sheriff returned Writ and Summons.

Defendant personally appears and for Plea says he is not indebted in manner and form to the plaintiff, and Mr. Roe, for the plaintiff, replys that he is indebted in manner and form and prays that it may be enquired of by the Country.

On motion of Mr. Roe, a Writ of Venire is ordered to be issued, returnable on Tuesday next.

On motion of defendant to withdraw his plea, It is granted, and on Consent of parties similar Rule, as above, is ordered to the same arbitrators.

Meldrum & Park
vs.
Jacques Burel.

On motion of Mr. Roe—It is ordered peremptorily that the defendant do plead on next Court day.

On this day, the Bail having surrendered the principal—It is ordered that the Sheriff do take him into custody.

Meldrum & Park
vs.
Jacques Burel.

Defendant, present in Court, says that he is not indebted in manner and form to the plaintiffs as by their Declaration it is alleged.

Continued for Replication on Motion of Mr. Roe.

Wm. Forsith
vs.
Math. Elliott.

Mr. Roe moves the Court that a peremptorily rule be made upon the defendant to plead in three days, and the defendant's attorney appearing stated to the Court that the same reason exists which induced him to pray time last term. By the Court: The delay to plead having been granted on affidavit by the defendant's special Attorney, that he could not plead for want of legal advice with safety to his constituents there being only one Attorney practising in this Court and that he had reason to expect before this day advice how to plead, which advice the said Attorney now suggests to have been expected by the express

not yet arrived but hourly expected, the Court extend the time to plead until next Court day.

Peremptory Rule to Plead in three days, on Motion of Mr. Roe.

Schieffelin & Askin
vs.
John Askin, Esq.

Continued till next court on Motion of plaintiff.

J. Schieffelin
vs.
Jno. Askin.

Continued, on motion of Mr. Roe for Replication.

L'Arch
vs.
Hunault.

MEMORANDUM: The Sheriff represents to the Court that there is no goal in the District for the reception of civil prisoners.[21]

Court adjourned till Tuesday, the 18th instant.

CHAS. SMYTH, *Clerk*.

COURT COMMON PLEAS, holden at L'Assomption, on Tuesday, the 18th day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge, etc.

PRO
UP CAN
WEST
DIST
18 March, 1794.

Summons returned. Defendant called, does not appear. Default on motion of Mr. Roe.

John Askin, Esq.,
vs.
Jos. Mainville
dt. Duchene,
Deft.

Mr. Roe filed peremptory Rule of last Court.

Defendant appears in person and files plea in abatement.

Continued on Motion for communication.

Schieffelin and Askin
vs.
John Askin.

Jonathan Schieffelin vs. John Askin.

Plea filed—Continued for communication.

Forsyth vs. M. Elliott.

On motion of defendant's attorney to plead two Pleas granted. Plea filed—continued on Motion for communication. Granted.

Meldrum & Park vs. Jacques Burel.

Mr. Roe fyles Replication. On motion of Mr. Roe ordered that Venire do issue, returnable on Friday next.

L'Arch vs. Hunault.

Mr. Roe fyles Replication. On motion ordered that Venire issue returnable on Friday next.

Court adjourned till Friday next, 21st instant.

CHS. SMYTH, *Clerk.*

PRO UP CAN WEST DIST

COURT COMMON PLEAS, holden at L'Assomption, on Friday, the 21st day of March, 1794, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge, etc.

John Burrel vs. Wm. Groesbeck.

Summons returned. Defendant called, does not appear. Default on Motion of Mr. Roe for plaintiff.

Meldrum & Park vs. Fran. Billette.

Defendant called, does not appear. Read former default. On motion of Mr. Roe, judgment for plaintiffs, and that a Writ of Enquiry do issue returnable last day of Term.

Hands
vs.
Rheaume.

Defendant called, does not appear—Default —on Motion, Judgment for plaintiff and that a Writ of Enquiry do issue returnable last day of term.

Antoine Dufresne
vs.
Drouillard.

Defendant called—does not appear—On Motion, default and judgment for the plaintiff. Writ of Enquiry do issue, returnable last day of term.

John Askin, Esq.,
vs.
Guillaum LaMothe.

Sheriff returned Writ of Sci.fa. Defendant called does not appear. On motion ordered that Sci.fa. issue upon Judgment, and that Costs of Sci. fa be allowed plaintiff.

Fi-fa issued 22nd May, 1794, returnable Jan., 1795.

Debt	£73	11	0	
Costs	8	0	6	
Subcosts				
				22

Int. on £73 11s. from 26th Augt. '89.

C. SMYTH.

John Askin, Esq.,
vs.
Pierre Solo.

On Motion of Mr. Roe—It is ordered that the Rule of submission of the fourteenth instant be extended to Tuesday, the twenty-fifth, for Return,

Meldrum & Park
vs.
Jacques Burel.

On Motion of Mr. Roe—It is ordered that the Return of Venire be extended to Tuesday next, on suggestion that the Jury could not be warned, it being impossible to cross the River owing to the Ice. Sheriff present in Court reports this circumstance.

J. Bte. L'Arch
vs.
Gab. Hunault.

The defendant's attorney filed affidavit and moves the Court that the trial of this issue be put off until July Term for want of a material evidence, and Mr. Roe, for the plaintiff, admits the fact stated in the said affidavit to be proved by the said material evidence to be true, and prays the Court that the Venire awarded last Court day be made returnable on Tuesday next.

By the Court: Ordered that Return of Venire be extended, returnable as above.

Wm. Forsith
vs.
M. Elliott.

Mr. Roe filed Replication. On Motion of Mr. Roe, ordered that Venire do issue, returnable on Thursday next for Trial in this issue.

J. Schieffelin
vs.
John Askin.

Mr. Roe filed Replication, and states to the Court that as issue is raised in this Cause—a Venire may be awarded, returnable on Thursday next.

By the Court: Over-Ruled and next Court given defendant to consider of the said Reply and rejoin.

Schieffelin and Askin
vs.
John Askin.

Mr. Roe, for plaintiffs, files Plea of Demurrer. On Motion to be argued on Tuesday next.

Court adjourned till Tuesday next, the 25th March inst.

C. Smyth, *Clerk.*

PRO
UP CAN
WEST
DIST

COURT COMMON PLEAS, holden at L'Assomption, on Tuesday, the twenty-fifth day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge, etc.

John Askin, Esq.,
vs.
Pierre Solo.

Mr. Roe files Award Arbitrators named in this Cause—continued.

Same
vs.
Jos. Mainville
dt. Duchene.

Defendant appears by his attorney, Charlotte Souligny, his wife, and files Letter of Attorney proved in Court by the Oath of Louis Bourrasa, confesses judgment for the sum of Twenty-five pounds Currency, but states to the Court that her husband, the Defendant, has not yet received the plaintiff's Title to the Land in question. Wherefore the Court orders stay of Execution until the plaintiff files in court the said Title from Mominier, the person from whom the Plaintiff purchased the land.

Title filed in the office 27th April, 1794.

C. SMYTH.

Exon. issued 30th April, 1794, ret. last day Sept. Term next.

Debt	£25	0	0
Costs	6	8	2
	£31	8	2
Writ		5	0

Interest from Judgment.

C. SMYTH, *Clerk.*

Meldrum & Park
vs.
Jacques Burel.

Sheriff returns Venire with pannel annexed.

Jury called and sworn:—

1. Antoine Dufresne, merchant.
2. Laurent Parrente, yeoman.
3. Antoine Labaddy, pre, do.
4. Joseph Barthelom, do.
5. Dominique Goddette, do.
6. Julien L'Bute, fils, do.
7. Jean Bapte. Chapperton, yeoman, do.
8. Laurrent Marrentet, do.
9. Francois Mouton, do.
10. Bte. Labaddy, fils, do.
11. Joseph Pillet, do.
12. Francois Meloche, do.

Mr. Roe files Subpœna issued in this Cause.

Charles Morand, Esq., called, Sworn to give Evidence.

Robert Gambell, Gentleman, and Jonathan Schieffelin, Merchant, Sworn.

Jury return Verdict for Defendant.[23]

Schieffelin and Askin
vs.
John Askin.

Upon Argument on Demurrer, Court order that the defendant do plead over.

J. Schieffelin
vs.
John Askin, Esq.

Mr. Roe files Rule of last Court and prays that peremptory Rule be made on defendant to Rejoin in three days, and the defendant present in Court states that he has not legal advice how to answer, whereupon the Court overrules plaintiff's Motion and order that the defendant do Rejoin peremptorily on the first day of next Term.

Court adjourned till 27th inst.

C. SMYTH, *Clerk.*

PRO
UP CAN
WEST
DIST

COURT COMMON PLEAS, holden at L'Assomption, on Thursday, the twenty-seventh day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge, etc.

Wm. Forsyth
vs.
M. Elliott.

On motion of Mr. Roe, and consent of defendant's attorney filed, Court ordered that the venire issued in this Cause returnable of this day, be extended to Monday next, 31st inst.

Geo. McDougall
vs.
Louis Beaulieu.

Sheriff return of nulla bona filed on fi-fa issued in this Cause.

Mr. Roe moves that a writ of Ca. ad. sa. do issue in this cause.

Court will advise.[24]

Schieffelin and Askin, Pltfs.,
vs.
John Askin, Deft.,
and
Jonathan Schieffelin, Pltf.,
vs.
John Askin, Deft.

The parties, plaintiffs and defendant, in the said causes respectively being present in court—It is ordered by the Court on motion of Mr. Roe, for plaintiffs, and with the consent of the said parties that the respective pleadings be withdrawn, the Bonds of Arbitration be cancelled, the Award of the Umpire set aside, and the several matters in dispute between the said plaintiffs and plaintiff and defendant be submitted to the Verdict of a Jury on the following points, to wit, what and to what amount are the overcharges and

errors in Account furnished to the said plaintiffs by the defendant for the years one thousand seven hundred and eighty-nine, one thousand seven hundred and ninety, one thousand seven hundred and ninety-two and ninety-one. What is the amount of the private account between Schieffelin, plaintiff, and Askin, defendant. If the amount of the said private Account should stand as an Item of credit in account with the said Schieffelin and Askin and John Askin; If the private account of John Askin, junior, with John Askin, the defendant, prior to the commencement of the Co-partnership between Schieffelin and Askin, should stand as an Item of Debit in Account of said Schieffelin and Askin with John Askin. What should be the amount of credit to be given to the said Schieffelin and Askin by the said John Askin on Account of Furs remitted by them to said John Askin in one thousand seven hundred and ninety-one.

On Motion of Mr. Roe, with consent of the said parties—It is ordered that a Venire do issue for Trial on Monday next, the thirty-first inst.

Court adjourned till to-morrow.

CHAS. SMYTH.

PRO
UP CAN
WEST
DIST

COURT OF COMMON PLEAS, holden at L'Assomption, on Friday the 28th day of March, 1794, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge, etc.

Defendant called does not appear, former Default read on Motion. Judgment for the plaintiff and that a Writ of Enquiry do issue returnable first day of July Term next.

Burrel
vs.
Groesbeck.
Issued.

Continued till Monday.

Geo. McDougall
vs.
Louis Beaulieu.

Judgment for the sum awarded with Costs, being seven pounds, N. Y. currency.

Execution issued 23rd May, '94, ret. 1st Jan., '95.

Debt	£4	7	6
Costs	6	18	2
	£11	5	8
Writ		5	0

Int. on £4 7s. 6d. from date Judgment.

C. S.

John Askin, Esq.,
vs.
Pierre Solo.

Court adjourned till Monday, 31st inst.

CHAS. SMYTH, *Clerk.*

PRO
UP CAN
WEST
DIST

COURT COMMON PLEAS, holden at L'Assomption, on Monday, the 31st day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge, etc.

Sheriff returns Venire with pannel annexed.

Jury called and sworn:—

1. George Meldrum, of Detroit, Merchant.
2. John McGregor, of Detroit, Merchant.

Schieffelin and
Askin
vs.
John Askin, Esq.,
and
Jonathan
Schieffelin
vs.
John Askin.

3. James Fraser, of Detroit, Merchant.
4. John Martin, of Detroit, Merchant.
5. George Sharpe, of Detroit, Merchant.
6. William Shepherd, of Detroit, Merchant.
7. Robert Abbott, of Detroit, Merchant.
8. Geo. McDougall, of Detroit, Merchant.
9. Angus McIntosh, of Detroit, Merchant.
10. Wm. Hands, of Detroit, Merchant.
11. Richard Pattinson, of Detroit, Merchant.
12. Moses David, of Detroit, Merchant.

John McGregor, Merchant.
James McDonell, Merchant. } Sworn for Plffs.

John Askwith, Gentleman.
Robert Stevens, Gentleman. } Sworn on behalf of Deft.

Jury Returned Verdict as follows:—Verdict of the Special Jury on the points submitted to their decision by a Rule of His Majesty's Court of Common Pleas for the Western District, Province of Upper Canada, in this Cause:—

First: In conformity with the said Rule of Court, the Jurors do find and say that the amount of overcharges and errors in account.

Account furnished to the said plaintiffs, Schieffelin and Askin, by the said defendant, John Askin, Esq., for the years one thousand seven hundred and eighty-nine, one thousand seven hundred and ninety, one thousand seven

hundred and ninety-one and one thousand seven hundred and ninety-two, do amount to the net sum of Ninety Pounds seventeen shillings, New York Currency.

Second: The said Jurors do also find and say that the amount of the private account between the said Jonathan Schieffelin and John Askin, defendant, is the sum of Two hundred and eighty Pounds, one shilling and one penny halfpenny, New York Currency.

Third: The said Jurors do also determine that the amount of the said private amount should stand as an item of Credit in Account with the said Scheiffelin and Askin and John Askin.

Fourth: The said Jurors also find that the private account of John Askin, Junr., with John Askin, defendant, prior to the commencement of the Co-partnership of Scheiffelin and Askin and amounting to the sum of two hundred and twenty-four Pounds, thirteen shillings and four pence, New York Currency, should not stand as an Item of Debit in Account with the said Scheiffelin and Askin and John Askin.

Fifth: The said Jurors do lastly find that the amount of Credit to be given the said Scheiffelin and Askin, by the said John Askin, on account of furs remitted by them to the said John Askin in one thousand seven hundred and ninety-one should be the sum of three thousand, six hundred and forty-six pounds, eight shillings, New York currency.[25]

Wm. Forsith, Pltf., vs. Math. Elliott.

On Motion of Mr. Roe, and on consent of defendant's attorney, it is ordered that Venire issued in this Cause and returnable of this day be discharged, and that a Venire do issue for Trial on the second day of July term.

Sub. issued and Venire.

Angus McIntosh vs. Pierre LaBute.

Sheriff filed Return of Writ. Defendant appeared, and on his confession Judgment for plaintiff for the Sum of Twenty-Nine Pounds, eighteen shillings, with Costs.

Exon. issued 30th Apr., '94. Ret. Sept. term.

Debt	£29 18 0
Costs	
Writ	5 0

Interest from date of judgment.

C. SMYTH.

LePage, Pltf., vs. Ouillet.

Sheriff filed Return of Writ. Defendant called, does not appear—Default on motion.

Meldrum & Park vs. Francois Billette.

Sheriff Returns Writ of Enquiry awarded in this Cause on Judgment of Default. On Motion, Judgment for the plaintiffs for the sum of forty-six pounds two shillings and threepence currency, with costs.

Exon. issued 30th April, '94. Ret. last day Sept. term.

Debt	£46 2 3
Costs	
Writ	5 0

Interest from Judgment.

C. SMYTH, *Clerk*.

Wm. Hands
J. Bte. Rheaume.

Sheriff Returns Writ of Enquiry awarded in this Cause on Judgment of Default. Judgment for the sum of one hundred and thirty-five pounds, eighteen shillings and five pence, with Interest from the seventeenth day of March, one thousand seven hundred and ninety-two, with costs of suit.

Dufresne, Pltff.
vs.
Drouillard.

Sheriff Returns Writ of Enquiry. Judgment for the sum of eighty-five pounds, eight shillings and fourpence halfpenny, with costs.

Exon. issued Apr. 30, '94. Ret. last day of Sept. Term.

Debt £85 8 4½
Costs .....

Writ 5 0
Interest from Judgment.

C. SMYTH, *Clerk.*

Geo. McDougall
vs.
Louis Beaulieu.

Ordered on Motion of Mr. Roe that Ca. ad. Sa. do issue against the defendant for satisfaction of Judgment rendered in this Cause.

Issued Ca. dated of this day—ret. 1st Court.

Subsequent costs
Writ £0 5 0

C. SMYTH, *Clerk.*

Geo. McDougall
vs.
Jacques Chovin.

Sheriff's return of Nulla Bona filed. On Motion of Mr. Roe ordered that Ca. ad sa.

do issue against the defendant for satisfaction of Judgment rendered in this Cause.

Issued dated of this day, ret. 1st Court.[26]

Subs. costs.

Writ.

Court adjourned till July term.

C. SMYTH, *Clerk.*

CHAPTER VIII

The Fifth Period of British Rule: 1792-1794

Criminal Court

THERE is a record extant of a Court of "Oyer and Terminer and General Gaol Delivery" during this Period—this is here given in full as showing the practice and procedure, as well as relating incidents of great interest.

Court of Oyer and Terminer.

At His Majesty's Court of Oyer and Terminer and General Gaol Delivery[1] holden at L'Assomption, in and for the District of Hesse, in the Province of Upper Canada, this third day of September, 1792, were

Present: Wm. Dummer Powell, Esquire, and his fellows.[2]

The King's Commission read.

The Sheriff returned the precept and calendar of prisoners.[3]

Called over the Panel of Justices, Grand and Petty Jurors and Peace Officers.

The following persons took the Oath as Grand Jurors, to wit:—

1. James May, of St. Anns, Merchant.
2. Jon'n Scheiffelin, of St. Anns, Gentleman.
3. William Caldwell, of Detroit, Esqr.
4. James Allen, of St. Anne, Merchant.
5. Geo. McDougall, of St. Anne, Merchant.
6. James Fraser, of St. Anne, Merchant.
7. David Robertson, of St. Anne, Merchant.
8. John Askin, Junr., of St. Anne, Merchant.
9. James McDonell, of St. Anne, Merchant.
10. Bazil Campeau, of St. Anne, Gentleman.
11. Joseph Visgar, of St. Anne, Merchant.
12. Charles Girardin, of St. Anne, Merchant.
13. Charles Morran, of St. Anne, Gentleman.
14. Francois Gamelin, of St. Anne, Gentleman.
15. Montigny Louvigny, of St. Anne, Gentleman.
16. Francois Chabert, of St. Anne, Esquire.

William Scott, of Detroit, was duly sworn to attend them during the Assizes.

W. R., *C. C. O. & T.*[4]

The above persons being charged withdrew, and William Lamothe, Esquire, returned as a Grand Juror, this day appeared, and was excused attendance by the Court as being employed in the King's Service in quality of Indian Interpreter.

The following persons were defaulted as Grand Jurors, to wit:—

1. George Sharp, of Detroit, Esquire.
2. Joncaire Chabert, of Detroit, Esquire.
3. Matthew Elliott, of Detroit, Esquire.
4. Alexis Maisonville, of Detroit, Esquire.
5. Chev'r. De Celoron, of Detroit, Gentleman.
6. Louis Beaufait, of Detroit, Gentleman.
7. Bapt'e Maloche.

The following Justices of the Peace were defaulted, to wit:—

1. Alexander Grant, Esquire.
2. Alexander McKee, Esquire.
3. Matthew Elliott, Esquire.
4. Alexis Maisonville, Esquire.
5. George Sharp, Esquire.
6. Angus McIntosh, Esquire.
7. Charles Gouin, Esquire.
8. Chabert Joncaire, Esquire.
9. William Park, Esquire.
10. George Leith, Esquire.

The following Peace Officers were defaulted, to wit:—

1. Alexis Maisonville, Esquire, Captain.
2. Bapt'e Chapoton.
3. Ch. Gouin.
4. Nich's Gouin.
5. Antoine Beaubien.
6. Francis Baby.
7. Pierre Tremblay.
8. J. B'te Cicot, and
9. Gab'le Godfroy.

The following persons were defaulted as Petty Jurors, to wit:—

1. James Urquhart, of L'Assomption, Merchant.
2. Laurant Parrent, of L'Assomption, Yeoman.
3. Will'm Forsyth, of St. Anne, Innkeeper.
4. Will'm Sorrel, of St. Anne, Innkeeper.
5. Joseph Edge, of St. Anne, Blacksmith.
6. Antoine Beaubien, of St. Anne, Gentleman.
7. Harry Facer, of St. Anne, Blacksmith.

The Coroner filed an Inquisition held on the body of Alex'r Clark. Verdict: Natural death.

Do. on the body of Wawanissé, an Indian man at Michilimackinac. Verdict: Murder by persons unknown.[5]

Do. on the body of Francois Lalonde, taken at Saguinau. Verdict: Death caused by Louis Roy.

Do. on the body of Pierre Grocher, taken at Detroit. Verdict: Wilful murder by an Indian Man called Guillet.

The Court ordered the Clerk to prepare indictments on the inquisitions of Pierre Grocher and Francis Lalonde.[6]

The Grand Jury being returned into Court, present, that a Murder had been committed on the person of Albert Graverot, and request the witnesses may be brought before them to-morrow.

That an Indian Man named Wawanisse has been murdered, and request the witnesses may be brought forward as aforesaid.

Ordered, that the Clerk do cause the aforesaid Witnesses to attend to-morrow morning at ten of the Clock.

The Grand Jury also present, that at the last Session of Oyer and Terminer and General Gaol Delivery for this District, a Bill was found against Chabouquoy and Cawquochish, two Indian Men, for the murder of David Lynd, alias Jacqou, of the River à La Tranche, and that with regret, they see the said Indians at large without being brought to trial.

Ordered, that a Warrant do issue, whereby the Sheriff for this district be ordered to apprehend the said Chabouquoy and Cawquochish, and have their bodies before this Court to answer to the said Indictments.

Issued and delivered warrants to the shff. on this order this 3rd Sept., 1792, W. R., C.C.

Adjourned till to-morrow morning at ten of the Clock.

W. Roe, *Clerk C. O. and T.*

PROVINCE OF UPPER CANADA.

Court of Oyer and Terminer and General Goal Delivery, holden in the Parish of L'Assomption, in and for the District of Hesse, this fourth day of September, 1792, pursuant to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

Issued and delivered warrant to the sheriff on this order the 4th Sept., '92. W. R., C.C.

The Grand Jury as of yesterday (to the exception of Mr. George McDougall) retired to the house of Madam Marantate, with a bill of indictment against Louis Roy for the murder of Francis Lalonde, at Saguina, which they returned a true bill, whereupon it is ORDERED, on motion of the Clerk that a Writ of Capias do issue, whereby the Sheriff for this district be ordered to have the body of the said Louis Roy before this Court on Thursday, the sixth day of August, inst., at the hour of ten in the forenoon, to answer to the said Indictment.

Issued and delivered warrant to the sheriff on this order this 4th Sept., '92. W. R., C.C.

The Clerk delivered to the Grand Jury a Bill of Indictment against an Indian Man called Guillet, for the murder of Pierre Grocher, late of Detroit, Mariner, with which they retired and returned the same as a true bill, whereupon It is ORDERED, on motion of the Clerk, that a Writ of Capias do issue,

whereby the Sheriff for this district be ordered to have the body of the said Indian man called Guillet before this Court, to answer to the said indictment.

In consequence of the presentment made by the Grand Jury of yesterday, Jacques Robitaille, of Detroit, Gentleman, Michael Rawleigh, and David Clark, Sargeant Charles McIntyre and Michael Lary, Privates, and Robert Brown, Drummer, all of His Majesty's Fifth Regiment of Foot, were duly sworn to give evidence before the Grand Jury touching the murder of an Indian called Wawanisse. On the same account Francois Fleurie was sworn to give evidence before the Grand Jury touching the murder of Albert Graverot, late of Michilimackinac, Trader.

ADJOURNED till to-morrow morning at ten of the clock.

W. ROE, *C. C. O. and T.*

PROVINCE OF UPPER CANADA. DISTRICT OF HESSE. 5 September, 1792.

Court of Oyer and Terminer and General Goal Delivery, holden in the Parish of L'Assomption, in and for the said District, the fifth day of September, 1792, agreeable to adjournment.

Present: William Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

The Grand Jury attended as of yesterday, and informed the Court that the presence of the two persons confined in Goal as Accessories to the murder of Albert Graverot, would

be necessary to enable them to accomplish an intended presentment.

The Sheriff returned a Cepi Corpus on the Writ issued yesterday against Louis Roy, and upon motion of the Clerk the Prisoner was set to the bar and pleaded not Guilty, for his trial put himself on God and his country.

The Prisoner consents to his trial coming on to-morrow morning at ten of the Clock.

The Clerk presented to the Grand Jury a bill against Josiah Cutan, of Detroit, Labourer, for burglary, which they found a true bill.[7]

ADJOURNED till to-morrow morning at ten of the clock.

W. ROE, *C.C.O. and T.*

PROVINCE OF UPPER CANADA. DISTRICT OF HESSE.

Court of Oyer and Terminer and General Goal Delivery, holden in the Parish of L'Assomption, in and for the said district, this sixth day of September, agreeable to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows:

Opened the Court after the usual proclamation.

The Sheriff returned a Venire, and on motion of the Clerk, Louis Roy was set to the bar in order to his trial agreeable to the rule of yesterday.

Mr. Hugh Holmes, of Detroit, schoolmaster, was duly sworn to interpret between the Court, Jury and Prisoner.

The Prisoner was informed of his right to

challenge, and the following jurors were sworn, to wit:—

1. Claude Reaume, of L'Assomption, Yeoman.
2. John Welch, of St. Anne, Cooper.
3. Joseph Bazinett, of L'Assomption, Yeoman.
4. Thomas Cox, of St. Anne, Innkeeper.
5. Henry Botsford, of St. Anne, Joiner.
6. Alexis Delisle, of St. Anne, Yeoman.
7. John Dodymead, of St. Anne, Innkeeper.
8. William Sorell, of St. Anne, Innkeeper.
9. Jacques Campeau, of St. Anne, Yeoman.
10. Joshua Cornwall, of St. Anne, Shoemaker.
11. Augustin Lafoy, of St. Anne, Armourer.
12. Joseph Edge, of St. Anne, Blacksmith.

The above persons being duly sworn, the Clerk opened the prosecution, which was translated by the Interpreter to the French part of the jury.

Felix Mettiz, of Detroit, Labourer, being duly sworn to give evidence in this cause, saith,—

That at Saguinan on the eighth day of April last, about the hour of eleven in the forenoon, the witness, the deceased, and Antoine Prevost, were diverting themselves by throwing sticks, stones, and mud at each other, that the deceased had a stick in his hand following the

prisoner, saying I will make you fly, that in running from the deceased, the prisoner caught up a Stone and, turning around, threw at the deceased, who was standing still, the Prisoner calling out, "Take care." The deceased ran forward and held up his hand against the stone, but whether the stone struck his hand or not cannot say. The deceased turned round, retreated about fifteen steps to where they were, and sat down, when the prisoner came up to him and asked where he was hurt, and the deceased said he did not know he was hurt, but thought he was sick from drinking. They took him to Mr. Gouin's House, and put him on a bed; he vomited a little and expired in a few minutes.

Q. by the Jury: Whether after the death of the deceased the prisoner attempted to make his escape.

Ans.: No. On the contrary, wished to be sent to Detroit.

By the Court: Was either the Prisoner or Deceased in liquor when the accident happened?

Ans.: The Prisoner was not, but the Deceased was a little intoxicated. That he knows of no misunderstanding between them. That the Stone was not thrown immediately at the deceased, but elevated in the air above his head.

The prisoner asked the witness no questions.

W. R.

ANTOINE PREVOST, of Detroit, labourer, was next duly sworn, who declares and says:

That on Easter Day last, himself, the Prisoner, and the deceased, were diverting themselves by throwing stones, sticks, and earth at each other. That the deceased was pursuing the Prisoner with a stick in his hand, when the latter stopped and picked up a Stone, which he threw at the deceased, and which the deceased received with his two hands, but did not perceive it strike him anywhere else. Knows of no quarrel happening between the Prisoner and the deceased. Here the witness was so weak that he could not proceed.

JONATHAN SCHIEFFELIN, of Detroit, Gentleman, being duly sworn, declares and says:

That on Easter day, the 8th day of April last, about dinner time, he observed several people throwing stones and sticks at each other, and a short time after Pierre Morin came into the House and told him that one of them was struck with a stone, which had done his business. That witness examined the Corps of the deceased and found one of his left ribs broke and a bruise on his breast. That witness, by desire of Major Smith and the Coroner of the District, held an Inquest on the Corps—who were of opinion that the death of the deceased was caused by the stroke of the stone without any malice. That the Stone now shown to the Jury was delivered to witness by Felix Mettiz, who swore before the inquest that it was the same stone that was thrown at and struck the deceased, but could not say where.

The Court re-called Felix Mettiz, and upon the Oath he had already taken, said: that the stone now shown to the Jury is the same stone that was thrown at the deceased.

The evidence for the Crown being now closed, the Prisoner was called upon to make his defence, who says:

That whatever happened was merely accidental, as he had neither pique or resentment against the deceased, and that, had not the deceased run forward to meet the Stone, it would not have reached him, as at the time of throwing it the deceased was at the distance of about sixty yards from him. That he does not think it hurt the deceased, as he observed the Stone rolling behind him. That on the deceased sitting down, the prisoner asked him if he was struck, who answered he believed not, but thought his weakness proceeded from the effect of liquor. That he offered him the use of his bed, which the deceased immediately accepted.

The Prisoner prayed that Felix Mettiz might be heard as an evidence on his behalf, who was duly sworn to answer any questions on his behalf.

By the Prisoner: Do you think that the Stone thrown at the deceased could have struck him had he remained where he was standing at the time of throwing?

Ans.: No, as he was at a distance of about thirty yards.

JONATHAN SCHIEFFELIN, of Detroit, Gentleman, was next duly sworn to answer any

questions that might be proposed to him on the part of the Prisoner.

By the Prisoner: Have you known me at any time to be a quarrelsome man, or given to liquor?

Ans.: No. I have always known you to be a quiet, peaceable man, and never heard you wished to injure your Comrades.

The testimony on the part of the Crown, and of the prisoner, being now closed, the Court proceeded to give the following charge:—

Gentlemen:

The Prisoner at the Bar stands charged upon the Oath of the Grand Jury with the felonious murder of Francis Lalonde. From the evidence it appears that on the day laid in the indictment, the Prisoner with the deceased, Mittiz, and Prevost, had amused themselves with drinking in good fellowship. That when they went out of the house the Prisoner was sober, and the deceased somewhat intoxicated. That playing together rudely throwing at each other sticks, stones, earth, etc., the Prisoner without any malice took up the Stone shown to you and threw it towards the deceased, at that moment still out of the probable reach of the Stone, the prisoner at the same time crying out "Take care or catch." That seeing the Stone thrown, the deceased steppd forward and held out his hands to catch the Stone, which struck his hand and fell down and rolled behind him. That the deceased retreated a few steps in apparent pain, when the Prisoner ran up to him inquiring where

he was hurt, and upon the deceased saying that he did not know, but felt as if sick from drinking strong liquor, the Prisoner offered him his bed and the others helped to carry him to it, where he vomited for a few minutes and expired before a man could get from the House to bleed him. It appears that one rib of the left side was broken and the flesh bruised. There appears no malice or inclination to mischief—such is the fact of the Homicide. The death of a man by the hand of another is in Law subject to four distinctions. It is justifiable where done in the execution of duty. It is excusable in cases of Self-defence or Misfortune where there was no malice or neglect. It is Manslaughter where the means used to accomplish the homicide were not unwarrantable or inconsiderate without Malice, or where the natural infirmity of our nature affords excuse from sudden passion on sufficient provocation. Murder is where there is a malignant predetermined resolution to do mischief and death ensues. You, Gentlemen of the Jury, are to take into consideration the evidence before you, and, weighing it maturely, to determine of which of these classes of Homicide the Prisoner is guilty. It is not justifiable. It is not murder. If you think the recreation described to you innocent in itself, and that the fatal accident proceeded not from a blamable inattention to the safety of his Comrades in the prosecution of their coarse play, you will find the fact to have been by misfortune. If, on the contrary, judging by the weight of the Stone, the force and

direction given to it to break a rib at such a distance, you should think the accident proceeded from a culpable inattention, though free from all design, you will find the Prisoner guilty of Manslaughter. By your verdict you are to discharge your own Consciences.

The jury being returned into court for their verdict say:

That Louis Roy, the Prisoner at the Bar, is not guilty of Murder, but of excusable Homicide by misfortune, and so say they all—and that he did not fly for it—to their knowledge.

The Court Orders the prisoner be remanded to the Custody of the Sheriff.[8]

The Grand Jury having found bill against Josiah Cutan for Burglary and felony. On motion of the Clerk, the Prisoner was set to the Bar and arraigned—pleaded not Guilty—puts himself on God and his Country. On motion of the Clerk and by consent of the Prisoner it is ordered that the trial of this issue be brought forward to-morrow morning at ten of the Clock, and that a Venire do issue, returnable at that period.

The Grand Jury for the District filed three presentments, exhibited this day, A, B and C, which the Court informed them should be transmitted to the superior powers.

Adjourned till to-morrow at the hour of ten in the forenoon.

W. Roe, *C.C.O. and T.*

PROVINCE OF UPPER CANADA. DISTRICT OF HESSE.

Court of Oyer and Terminer and General Goal Delivery, holden at L'Assomption, in and for the said District of Hesse, on Friday, the seventh day of September, 1792, pursuant to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

The Sheriff returned the Venire, and on motion of the Clerk,

Josiah Cutan was set to the bar in order to his trial, agreeable to the Rule of yesterday.

The Prisoner was informed of his right to Challenge, and the following persons were duly sworn to pass upon his trial, to wit:

1. Amable St. Côme, of St. Anne, Armourer.
2. George Chislestul, of St. Anne, Shoemaker.
3. Isaac Williams, of St. Anne, Trader.
4. Matthew Dalson, of St. Anne, Innkeeper.
5. Robert Gouin, of St. Anne, Taylor.
6. Hugh Holmes, of St. Anne, Schoolmaster.
7. John Welch, of St. Anne, Cooper.
8. Thos. Cox, of St. Anne, Innkeeper.
9. Henry Botsford, of St. Anne, Joiner.
10. Wm. Sorrel, of St. Anne, Innkeeper.
11. Joshua Cornwall, of St. Anne, Shoemaker.
12. Joseph Edge, of St. Anne, blacksmith.

The foregoing twelve persons being duly

sworn, the Clerk opened the prosecution and called on

Louis Campeau, who after being duly sworn declares and says:

That sometime last Fall, cannot exactly recollect the period, about midnight, Joseph Campeau, of St. Anne, Trader, came to the house where witness lived and requested that he would assist him in apprehending a Thief that had been stealing in his Shop, that accordingly Witness and said Campeau set off and overtook the Prisoner behind Mr. Robert McDougall's, at whose House they stopped, and requested the assistance of one Pilon, who immediately took charge of the Prisoner with the said Joseph Campeau, while witness returned to the Shop to see if there were no other robbers remaining, and on his way thither, about one acre and a half from the said House or Shop, saw a bag lying containing some smoked skins and two kegs of rum and a bundle of Peltry, but cannot say of what quality. That on the Prisoner being brought back to the Shop, he was asked if he had stole anything else, which he answered in the negative, but acknowledged to have taken the above enumerated articles. That he (the witness) does not understand english, but learned this from Mr. Jos. Campeau, who interpreted it to him. That the said Jos. Campeau frequently slept in the said store or shop where the robbery was committed.

Q. by Jury: Did the prisoner attempt to make his escape?

Ans.: I do not know.

Q. by the Jury: Was there any property found on the prisoner?

Ans.: No.

By the Clerk: Did you find anything in the Shope that the prisoner acknowledged to be his property?

Ans.: Yes, an Adze, which he acknowledged to be the instrument with which he made his entry into the said Store.

By the Court: Where did the robbery happen?

Ans.: On the north side of the River Detroit, about half a league above the Fort, in a House the property of Mr. Jacques Campeau, leased by Mr. Joseph Campeau, and that the goods therein were the property of the said Joseph.

By the Court: Through what part of the said Shop did the Prisoner make his entrance?

Ans.: By the door, which he forced open with the said Adze. That he saw the marks of violence by which he effected the same.

By the Court: Is there any Chimney in the said Shop?

Ans.: That he has been there since the said robbery was committed and saw the Chimney. Knows M. Jos. Campeau; has slept there since. That the Prisoner attempted to resist being brought forward.

The prisoner had no questions to propose to this witness.

Ralph Pilon, of Detroit, Labourer, was next duly sworn, who declares and says:

That about the eighteenth day of October last he resided at Mr. Robt. McDougall's, and

about midnight was called up by Mr. Jos. Campeau to assist in conducting a Negro, which the witness recognised to be the Prisoner at the Bar, who they accordingly conducted to the House of M. Jacques Campeau. That he went up into the garret of M. Joseph Campeau's store, and observed the different articles of merchandize there, very much deranged. That on his way to the said house he observed a bag lying on the road, which on being brought to the House contained two Kegs of rum, and other articles, which he does not recollect.

The Clerk here moved to read the voluntary confession of the Prisoner taken before John Askin and Geo. Sharp, Esquires, two of His Majesty's Justices of the Peace for the district, which was duly proven on oath by the said John Askin, Esq., to have been voluntarily taken before him, without any threats or menace being used to obtain the same. Read the same to the jury.

Jacques Campeau, of Detroit, trader, being duly sworn, declares and says: That for about these three years past he has leased a building to Mr. Jos. Campeau, which he occupies as a shop: that he takes his meals at his the witness's House but usually sleeps in the said shop: that when he does not sleep there himself he generally left some person to take charge thereof.

The Prisoner was here called upon to make his defence, who says That true it is, Mr. Campeau took him prisoner; that he does not understand French, but that in answer to any

questions he proposed to him, he may have said yes.

The evidence on the part of the prosecution being now closed, and the Prisoner having no Witnesses to call, the Court delivered the following charge to the jury:—

Gentlemen of the Jury:

The offence charged in the indictment upon the Prisoner at the Bar is burglary, that is to say, a breaking of a Dwelling-House by Night with intent to commit a felony. It is proved to you that on the night of the 18th of October last the Prisoner about midnight was found in the road near Mr. Campeau's house. That upon alarm of noise several persons assembled and found the Store of Mr. Jos. Campeau broke open. They found a Carpenter's adze near it, the supposed instrument of the violence, and merchandise and liquors were found near the store, but not proved to have been the property of Mr. Campeau—but the Prisoner's voluntary confession on examination before two Justices proved in evidence to you, shows beyond a doubt that he was guilty of the Burglary, that he forced the door with the adze, and took away the articles described. It remains only for the Court to inform you, that by a Dwelling-House alone being the subject of the aggravated offence of Burglary, the Law meant to secure to the Subject the peaceful Indulgence of rest by night, and that to give to every House the character of a Dwelling-House, it is enough that the Owner, or some one having charge of it, sleeps in the House usually, although he may board else-

where—The being absent from the House on the Night of the Burglary does not diminish the offence, if you shall be satisfied that it was not abandoned, and one of the Witnesses swears, that before and since the burglary Joseph Campeau usually slept in it. You will consider of the evidence under this view of the Offence, and discharge your Consciences.

The jury being returned into Court for their verdict, say:

That Josiah Cutan, the Prisoner at the bar, is guilty of the Burglary and felony, whereof he stands indicted, and so they say all. That he had neither goods, chattels, land or tenement, at the time of the said Burglary and felony committed, or at any time since, nor did he fly for it, to their knowledge.[9]

The Court remanded the Prisoner to the custody of the Sheriff.

Adjourned till Monday next at the hour of ten in the forenoon.

W. Roe, *C.C.O. and T.*

PROVINCE OF UPPER CANADA. DIST OF HESSE.

Court of Oyer and Terminer and General Goal Delivery, holden at L'Assomption, in and for the said District, on Monday, the tenth day of Sept., 1792, pursuant to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

Pursuant to the request of the Grand Jury, It is ordered that George Sharp, Esq., and Chevalier De Celoron, Gentleman, both of the Parish of St. Anne, be fined in the sum of

Forty Shillings, Currency, each for non-attendance as Grand Jurors agreeable to the return of the Sheriff.

A fine of twenty shillings is set on James Urquhart, of L'Assomption, Merchant, Laurent Parent, of the same place, Yeoman, and Antoine Beaubien, of St. Anne, Gentleman, for their non-attendance as Petty Jurors.

A fine of twenty shillings is set on Pierre L'Etourneau and André Peltier, of L'Assomption, Yeoman, for their non-attendance as Peace Officers—and that those several fines be estreated.

The Clerk having stated to the Court the Verdict rendered against Josiah Cutan, for Burglary the seventh inst., moved that the said Josiah Cutan might be set to the bar in order to Judgment being pronounced against him, which was done accordingly—when he was asked by the Clerk if he had aught to say why the sentence of the Law should not be pronounced against him, who answered that he had not. On motion by the Clerk for Judgment, the Court pronounced the following sentence.

Josiah Cutan,—You have been found guilty by the Verdict of twelve good and impartial men upon the plain evidence of your own voluntary confession, in addition to other proof, of having committed on the eighteenth of October last a Burglary in the house of Jos. Campeau. This Crime is so much more atrocious and alarming to society, as it is committed by night, when the world is at repose, and that it cannot be guarded against without

the same precautions which are used against the wild beasts of the forest, who, like you, go prowling about by night for their prey. A member so hurtful to the peace of society, no good Laws will permit to continue in it, and the Court in obedience to the Law has imposed upon it the painful duty of pronouncing its sentence, which is that you be taken from hence to the Goal from whence you came, and from thence to the place of execution, where you are to be hanged by the neck until you are dead. And the Lord have mercy upon your soul.

W. Roe, *C.C.O. and T.*

It will be seen that the Crown business at this Court was conducted by the Clerk, Walter Roe.

While the Attorney General, John White, allowed Walter Roe to conduct the Crown prosecutions in this District in 1792, he himself thereafter acted as Crown Prosecutor so long as Michigan remained Canadian—indeed, after it ceased to be Canadian; but we are not concerned about that time. We find him attending the Court of Oyer and Terminer, October 14, 15 and 16, 1793, prosecuting William Wright for murder, Gregory Fortune for Burglary and Joseph Murphy for Larceny. David Burns the Clerk of the Crown and Common Pleas for Upper Canada also attended as Clerk of the Court. Apparently William Osgoode the Chief Justice of the Province was the Presiding Judge but this is not certain.

There was no change in respect of these Courts after

the passing of the Judicature Act of 1794 which ushered in the

Sixth Period of British Rule: 1794-1796

I accordingly continue the story and here complete it so far as it is known.

On August 28 and 29, 1794, a Court of Oyer and Terminer and General Gaol Delivery was held at L'Assumption by William Dummer Powell, Puisné Justice of the Court of King's Bench, the Chief Justice, William Osgoode, having gone east to take the assizes of the Midland and Eastern Districts and then to become Chief Justice at Quebec. Powell, the first judge to be appointed to the Bench of the Court of King's Bench, now had also the two Civil Commissions of Assize and Nisi Prius, and accordingly held the "Assizes" for both Civil and Criminal cases.

There were two murder cases, John Miller and Charles Valle; while Jean Baptiste Chapeton was tried for sedition.[10]

September 1, 1795, a Court of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery was held by Powell, John White, Attorney General being Crown Prosecutor, and David Burns, Clerk of the Court.

One Mishinaway or Mishiniaway, a Chippaway Indian, was tried for murder: he was successfully defended by Walter Roe at the expense of the Indian Department.[11] One Cameron was also indicted for murder but apparently "No Bill" was found, as he was not tried.

Perie Labadie was tried for murder and Widow Susannah Baby for a nuisance.[12]

The Court for the Western District for 1796 did not sit till after the evacuation of Detroit and Michillimackimac by the British, and the Sixth Period of British Rule had come to an end.[13-15]

CHAPTER IX

Sixth Period of British Rule: 1794-1796

THIS Period began with the coming into force of the Judicature or King's Bench Act, July 7, 1794.[1] This together with the Districts Courts Act[2] which was passed the same year and came into force the same day, revolutionized the Civil Courts of the Province and the former Act made a change in Criminal Matters as well.

The Court of King's Bench

The system of Civil Courts of unlimited jurisdiction so far as the character of the claim was concerned but limited geographically to a certain District was in vogue in French Canada and was adopted by the British conqueror. In England there were many Courts with limited jurisdiction geographically, e. g., the County Courts, &c.; but none of these had unlimited jurisdiction in respect of the claims to be sued on therein. The Courts in which there was no limit as to the claim had unlimited jurisdiction also as to area, and could entertain a claim from any part of England. The first Lieutenant Governor of Upper Canada was Colonel John Graves Simcoe, an intense Englishman, to whose mind everything English was perfect and should be followed in every Colony.[3] He determined to put an end to the French Canadian system and to have a Superior Court for the whole Province.

A Bill was drawn up by William Osgoode, the Chief Justice, for that purpose passed the Legislative Council by a bare majority after a spirited and able opposition on the part of two Councillors, Richard Cartwright and Robert Hamilton. The popular House, the Legislative Assembly, passed the Bill unanimously, largely influenced it would seem by the popular dissatisfaction with some of the decisions of lay Judges in the Courts of Common Pleas.[4]

This Act created a "Court of King's Bench for the Province of Upper Canada" with the jurisdiction of all the Superior Courts of Law in England, but without the jurisdiction in Equity of the Court of Chancery or of the Court of Exchequer.[5] The jurisdiction was purely at Law and was both Civil and Criminal.

Civil Jurisdiction, &c., of Court of King's Bench

The Court was not limited in amount or in area.

Actions were begun by a Writ of Capias ad Respondendum, commonly called Ca. Re.; but while in form it directed the Sheriff to arrest the defendant, in fact that was not the effect except in special cases.

In the ordinary case, the plaintiff wrote out a Declaration containing his alleged cause of action and his claim; filed this in Court; sued out a writ of Ca. Re. from the office of the Clerk of Pleas (often called the Common Pleas); gave the Sheriff the Writ and a copy also annexing a copy of the Declaration to each: the Sheriff served the defendant with Writ and Declaration, there being endorsed on the Writ a notice to the

defendant in English or French to appear in Court upon the day named.[6]

In certain cases an actual arrest was allowed: if a plaintiff swore to a debt certain and that he believed that the defendant was about to leave the Province with an intent to defraud his creditor, the Sheriff actually seized the defendant and held him unless and until he gave bail.

The course of Pleading, &c., was as in England

While the Court could try civil cases *en Banc,* as it was called, it never did so in this period. What was done was to make up a Record of the Pleadings when they were complete and have the case tried by a Court of Assize and Nisi Prius in the District. As has been said, the Judge who had a Commission of Assize and Nisi Prius had in practice also Commissions of Oyer and Terminer and General Gaol Delivery; and the Civil and Criminal "Assizes" were held by the same Judge at the same time and place.

Motions for new trials, &c., were made to the Court sitting *en banc* at Newark (Niagara).

The Records of the former Courts of Common Pleas were brought into the new Court and the Courts of Common Pleas were abolished.

Appeal

The Governor (if he were in the Province and in fact he never was), Lieutenant Governor or Administrator

or the Chief Justice with two or more Executive Councillors were a Court of Appeal with a further appeal to the King-in-Council in certain cases. As no appeals are recorded from Michigan nothing further need be said as to that matter.

Court of Assize and Nisi Prius

Courts of Assize and Nisi Prius are known to have been held each year in the Western District. No Record of these Courts, however, is extant: but I can find some Michigan names in the Term Book of the Court of King's Bench for this Period.

1795, January 19, "Forsyth and Co., Pltf: Gamelin, Deft. Writ returned."

January 25, "William Forsythe, Pltf: Matthew Elliot, Deft. Leave to withdraw the Statute of Limitations in the cause pleaded—to pay the money into Court and to plead a tender to the first and second Counts and the General Issue to the last was granted on motion of the Attorney General."[7]

April 20, "Forsyth v. Hare: Capias returned". There must have been default of appearance and an Interlocutory Judgment signed—we find a Writ of Enquiry returned November 7, 1796.

May 2, "Capias returned" in Askin v. Stauffer: McDougall v. LaJoy: McDougall v. Campeau: Askin v. Lavasseur; Meldrum & Park v. Clark; Askin v. Pollard: McDougal v. Parke, and

July 27, in Forsyth v. Munro.

The first four disappear: in Meldrum & Park v.

Clark, Angus, Macdonell was retained by the plaintiffs and John White for the defendants and after certain legal skirmishing, July 29 and November 2, the action was discontinued, November 4, 1765.

Askin v. Pollard disappears: the others have varied fortunes. In a case of Askin v. Godfrey an order is made by the Court in Term setting aside an Inquisition and ordering an Alias Writ of Enquiry January 18, 1796. There is an action too, of Forsyth v. Hind: one of McDougall v. Ruland; another of Meldrum & Park v. Clark went to trial and resulted in a verdict for the plaintiff: April 18, and 22, Angus Macdonell moved for a New Trial: The Rule was argued, April 25, but the motion failed, John White opposing.

There are a few other names (possibly) of Detroit residents but that is not certain.[8]

District Courts

The abolition of the Courts of Common Pleas was a hardship on those with comparatively small claims but not so small as to come within the jurisdiction of the Courts of Requests. In the Court of King's Bench it was necessary for the plaintiff to send to Niagara for the Writ of Ca. Re., a very great expense in a comparatively small case.

Accordingly the Legislature in the same year created in each District a District Court with jurisdiction in contracts above 40 shillings up to £15 (i. e., from $8 to $60). These Courts were presided over by a Commission or Commissioners, at that time all laymen (for

there were no lawyers)—and sat four times a year in the Western District at Detroit.[9]

The Judge of this Court during this Period was James Harffly.[10]. No Records of this Court are extant.

Probate Court and Surrogate Courts

These Courts established in 1793 will be dealt with in the Chapter on the Prerogative Courts.[11]

Civil Courts

In this Period the following were the Civil Courts:

1. Court of King's Bench: Full jurisdiction.
2. Court of Assize and Nisi Prius; Trials only.
3. District Court: 40/– to £15 in Contract.
4. Court of Requests: up to 40/– in Contract.

Criminal Courts

The Court of King's Bench had full criminal jurisdiction: but seldom tried criminal cases itself[12]—no case came from Michigan and consequently this is not pursued.

The Courts of Oyer and Terminer and General Gaol Delivery have already been mentioned.

Court of General Quarter Sessions of the Peace sat at Detroit Court of Special Sessions of the Peace at Michillimackinac. No records of these Courts are extant except Presentments from Grand Jury April and July, 1795.

Justices' Courts for Petit Larceny. No records of these Courts are extant.

CHAPTER X

The Prerogative Court

BY REASON of the fact that this Court is wholly unknown to the present generation as to several past generations, and is quite foreign to the Common Law, it will be well to give a comparatively exhaustive account of it, even at the peril of repetition.

As we have seen the territory which became the Province of Upper Canada including Michigan, had been part of the Province of Quebec by virtue of the celebrated Quebec Act, 14 George III, c. 83.[1]

For a time after the Royal Proclamation of October 7, 1763, the Laws of England in Criminal matters and in part at least in Civil matters had prevailed in the "Government" or Province of Quebec: but the Quebec Act of 1774 had by section 11 provided that the Criminal Laws of England should continue to be in force while section 8 altered the Civil Law so that "in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of Canada". These "Laws of Canada" had nothing in common with the "Common Law of England" but were in substance the laws of a part of France, known collectively as the Custom of Paris, Coutume de Paris.

The Canada or Constitutional Act of 1791 by section 23 enacted that "all Laws, Statutes and Ordinances . . . shall remain and continue in force . . . as if the Province of Quebec had not been divided"—conse-

quently, Upper Canada began with the English Criminal Law and the French Canadian Civil Law, in each case as modified by Statute and the Ordinances of the Governor and Council at Quebec.

In civil matters the Canadian law was in some respects much in advance of the Common Law of England, even when the latter was eked out by Equity.[2]

One example of this preeminence is the Prerogative Court wholly unknown to the English Laws—at least in the sense in which the words were used in Canadian jurisprudence.[3]

In the Canadian law there was no distinction between Law and Equity and, consequently, no need of two sets of Courts as in England; and in the French Period the Judges at the seat of government in each of the three Districts that is, at Quebec, Montreal and Three Rivers rendered justice in all civil cases, not only in such cases as could be tried in an English Court of Law but also in the election of Guardians, Surrogated Guardians and Curators.[4]

There was no change in the practice at the Conquest until after the formal Cession of Canada to Britain by the Treaty of Paris 1763; September 17, 1764, General James Murray, the Governor of Quebec, passed in Council an Ordinance establishing Courts of Justice.[5]

In the Superior Court of Judicature or Court of King's Bench all cases, civil and criminal, were to be decided according to the Laws of England and the Ordinances of the Province—the Inferior Court of Judicature or Court of Common Pleas had only civil jurisdiction and the Judges were "to determine agree-

able to Equity, having regard nevertheless to the Laws of England as far as the circumstances and present situation of things will admit".

The introduction of the English law effected a change in the Courts in respect of Wills and Intestate Estates. At the Canadian law, a will had effect without the intervention of any Court and *proprio vigore:* by the will itself upon the death of the testament-maker, the "heritiers" became entitled forthwith. The will had the same effect in the English law so far as lands were concerned but as to personalty the will was ineffective unless admitted to Probate.[6]

Letters of Probate were granted in England by the Court of the Bishop's Ordinary in each Diocese or the Prerogative Court of the Archbishop. No such Courts existed in Canada: and Murray received specific Instructions not to allow the ecclesiastical jurisdiction of the Bishop of London (who was given general ecclesiastical supervision over the Province) to extend to granting Probates of Wills; that power along with granting marriage licenses was reserved to the Governor himself.[7]

Naturally, he could not exercise the function of granting Letters of Probate in person: and we find that he appointed two of the Judges of the Court of Common Pleas, Messrs. Mabane and Fraser, his Surrogates or Deputies.[8]

The Judges Surrogate instead of following the Canadian practice introduced that of England—for example they granted Letters of Administration of intestate estates to Administrators from whom they required

security instead of calling together relatives and friends of the deceased to the number of seven and leaving the choice of "Curateurs" or Curators to them, the Judges "homologating," that is appointing or rather approving the person of their choice, who would act without security.[9]

This new practice, the French Canadian found very onerous: and many complaints were made to the authorities: finally in 1767, Governor Guy Carleton ordered the Surrogates to drop the English and resume the Canadian practice as much simpler, easier and less expensive.

After the Quebec Act of 1774 by which as we have seen Michigan came into the Province of Quebec the whole Judicial system was overhauled and a new set of Ordinances passed in 1777.[10] No attention was given in these Ordinances to Guardianship of Infants, Curatorship of Estates, &c: but the Judges of the Courts of Common Pleas received Commissions from the Governor to grant Letters of Probate and Administration. By reason of the reintroduction of Canadian Law by the Quebec Act, Letters of Administration were no longer necessary nor were Letters of Probate; but the "Old Subjects", i. e. the English-speaking from the Old Land or the American Colonies, as a rule preferred the English way, the French Canadians or "New Subjects", the old familiar Canadian way.

The Judges took the appellation "Judges of the Prerogative Court", when acting in that capacity, and proceeded according to the wish of the applicants: they continued in the election of Guardians and Curators according to the ancient Canadian forms and usages,

but granted Letters of Probate and Administration to "Old Subjects" according to English forms.[11]

Although the jurisdiction was different, it was a matter of course that a Judge of the Court of Common Pleas should be also a Judge of the Prerogative Court; and so much was it a part of his duties that he served without any remuneration, his salary as Judge of the Court of Common Pleas being considered to cover these services also. Nevertheless a Commission was issued to them as Judges of the Prerogative Court under the Great Seal of the Province giving them power to take the Probates of Wills relating to real and personal estate, to issue Letters of Administration, prove Inventories and Accounts and "to transact whatever may be legal and right for the just execution of all Wills and Codicils and touching estates, Lands, Tenements, Goods, Chattels, Rights, Credits, and Effects of all and every Intestate: and to divide, apportion, appropriate and decree the same to such persons and in such manner as by Law, it is permitted and directed to be done".[12] All this could under the Canadian Law be done by the ordinary Courts of Justice except the wholly unnecessary granting of Letters of Probate and Administration.

By the Ordinance of February 25, 1777, 17 George III, c. 1., a Court of Common Pleas was erected for each of the two Districts, of Quebec and Montreal, into which the Province of Quebec was divided—and in each District the Judges of the Court of Common Pleas also acted as Judges of the Prerogative Court of that District.

Before Upper Canada came into existence, Lord Dorchester (Sir Guy Carleton) divided the territory afterwards to become Upper Canada into four Districts—Luneburg from the eastern boundary west to the mouth of the Gananoque River, Mecklenburg, west to the mouth of the Trent, Nassau, west to Long Point on Lake Erie and Hesse to the western limit of the old Province of Quebec including, *de facto,* much of the present Michigan.[13]

In each of these Districts was erected a Court of Common Pleas:[14] the Judges of these Courts without further Commission acted as Judges of the Prerogative Court in these Districts.[15] In these Courts they had all the powers of the Prerogative Courts in old Quebec except the granting of Letters of Probate and Administration, which power the Judges in Quebec and Montreal received under their Commission only. This was, as has already been said, wholly unnecessary under the Canadian law; and became necessary only on the coming into force of the first Statute of the Legislature of Upper Canada assented to October 15, 1792, 32 George III, c. 1 (U. C.) which by Section 3 provided that "from and after the passing of this Act in all matters of controversy relative to property and civil rights resort shall be had to the Laws of England".[16]

Up to this time, the four Prerogative Courts continued to function and then disappeared *ipso facto.*[17]

The Court in the District of Hesse was presided over by the accomplished lawyer, afterwards Chief Justice of Upper Canada, William Dummer Powell.[18] We have a full record of the proceedings in this Court and they

will show the scope and value of the Court's jurisdiction.[19]

Powell arrived in Detroit in which he was to reside, on June 9, 1789, after a journey of thirty-nine days chiefly by water, from Montreal: he sat in his Court of Common Pleas at L'Assomption, (now Sandwich), for the first time, July 16; but two weeks before, he began his career as Judge of the Prerogative Court of the District of Hesse.[20]

The first proceedings were in respect of the four orphan children and intestate estate of Jacques Campau, a man of some prominence in the Post. As these proceedings are in a sense typical and are given in some particularity, they will be given here in full.

The first step was a petition to the Judge and an appointment by him of time and place of meeting of a Family Council.

2nd July 1789

Province de Quebec
District de Hesse SS.

A L'Honorable William Dummer Powell, Esquire, Juge pour le District d'Hesse et dependancies, &c., &c.

Monsieur

Suplie humblement Jacques Campau tant en son nom qu'au nom des Coheritiers dans la Succession de feu Jacques Campau, leur père qu'il leur soit permis et accordé de faire Inventaire en general des biens meubles et immeubles de la dite Succession, et de vouloir bien consenté à une assemblée de Parents et amis pour procéder au dit Inventaire de la manière la plus sure et plus convenable en egarde a quatre mineurs, leurs frères et Soeur et qu'il soit crée un tuteur et subrogé tuteur pour être temoins d'un compte fidelle au dit Inventaire.

Ce qu'attend de notre justice le dit supliant qui continuant ses voeux pour votre sante et prosperites a l'honneur d'etre avec respect.

du Detroit, District d'Hesse
le 11r. Juliet, 1789

Monsieur
Votre très humble et tres obeissant
Serviteur
(Signed) Jacques Campau[21]

Thereupon a Fiat was entered

Let the assembly be held at my
Chambers on the 2nd instant at
10 o'Clock before noon.
(Signed) William Dummer Powell,
J.C.P.

Jacques Campau had died and his estate had not been wound up and could not be by reason of infant children of Campau, three boys and a girl, being interested; it was desired to have a complete Inventory of the estate of record and in order that the interests of the infants should be protected, a Tuteur, i. e., what we call a Guardian, and a Tuteur Subroge,[22] i. e., one selected by the relatives and friends and appointed by the Judge to watch over the interests of the minors, should be selected. Accordingly Jacques Campau, Jr., an adult son of the deceased signed a petition on the Register of the Prerogative Court for a Family Council of relatives and friends to select these officers: the petition was presented to the Judge and he fixed a time for the Family Council to meet at his own house in Detroit.

The Family Council was held: the following is the official record:

"Province de Quebec, District Hesse, SS. Ce jour d'hui deuxiems du mois de Juliet, mil sept cent quatre vingt (vingt) neuf, en consequence de la Requette de Jacques Campau fils, tendant au qu'il fut Inventaire des biens de la Succession de feu Jacques Campau la ditte Requette appointée par L'Honorable William Dummer Powell, Juge pour le District d'Hesse ordonnant qu'il soit fait une assemblée de parents et amis pour proceder a l'Election d'un Tuteur et Subrogé Tuteur en egard aux mineurs; ont comparee en l'Hotel de l'Honorable William Dummer Powell, Ecueir, Juge pour le sus dit District les Sieurs Simon Campau et Jean Bte. Campau, oncles des dits mineurs, les Sieurs Baptiste Campau leur Cousin, les Sieur Guillaume St. Bernard, Charles Morran & Baptiste Meloches par Baptiste Peltier alliés, les quels apres serments preté aux mains de mon dit Sieur William D. Powell de donner bone et fidelle avis sur l'election d'un Tuteur et Subrogé Tuteur aux dits mineurs, ont nommé la personne du Sieur Jacques Campau frere des dits mineurs; et pour Subroge Tuteur la personne du sieur Simon Campau leur oncle, les quels on accepte et preter Serment aux mains de mon dit Sieur Wm. D. Powell d'etre et representer le frais et cause des dits mineurs dans le dit Inventaire, et de faire valoir leur droits et faire exercer leur devoir suivant la tenuer de leur Serment et ont signé ou fait leur marque

(signed) Wm Dummer Powell J. C. P.
(") T. Smith Clk

(signed) Jacques Campeau
(") Simon Campeau
(") J. Bt Campeau
(") J. Bte Campeau
(") G. St. Bernard
(") Chas Moran
(") Baptiste x Meloche
sa
marque
(") baptiste Peltier"[23]

On November 5, 1789, a Family Council was held by Powell—his Clerk, Thomas Smith, also being present—to select a Tuteur and Subrogé Tuteur for ten minor children of the late Joseph Socia of the Parish of St. Anne. At this Council which met at the Presbytery of the Church at L'Assomption now Sandwich attended Baptiste Campau (who signed "J. Bte Campau") Louis, Joseph, Ignace, Ambroise, and François Tremblay (all of whom signed by their mark) and Gagiton Segan (who also made his mark). They selected Joseph Socia, Jr., as Tuteur and Ambroise Tremblay as Subrogé Tuteur.[24] The record is in French.

April 12, 1790, Catherine Billiou dite L'Esperance widow of the late Augustin Thibault of Detroit, who had been in charge of the estate, wished to have the Inventory made and passed: there was a minor child, Marie Catherine, and, like Jacques Campau in the first case, she applied to the Judge for a Family Council: this met at the house of Judge Powell in Detroit and was attended by Messrs. Antoine Minné, grandfather of the minor, Mitchel (or Michelle) Hood, stepfather (beaupére) of the widow—both these made their marks—Joseph Voyer, Jean François Giradin, Jean Baptiste Racourt, and François Xavier L'atendre (a marksman). They named the widow, Tutrice, and the grandfather, Subrogé Tuteur. This record is also in French.

September 18, 1790, Marie Jeanne Peltier, widow of the late Nicolas Goyeaux,[25] had a Family Council called. It met at the house of Judge Powell in Detroit and Messrs. André Peltier, father of the widow, Louis Gyeaux, brother of the deceased, Vital Dumouchelle,

brother-in-law of the deceased, Antoine Meloche, her uncle, and François Porthine and Joseph Pouchet, friends, along with widow, named her, the Tutrice, and Dumouchel, Subrogé Tuteur. The record is in French and all are marksmen but Dumouchel, Porthine and Pouchet.[26]

The practice was in use—and necessarily so—among the English speaking inhabitants.

In November, 1790, an English case occurred which is worth setting out in full:

15 November 1790

Province of Quebec } On the fifteenth day of November in the
District of Hesse } year of our Lord one Thousand Seven Hundred and Ninety, Before me William Dummer Powell Esquire, first Judge of his Majesty's Court of Common Pleas for said District personally appeared at the instance of Daniel Fields of Detroit, Blacksmith (by his petition of this date setting forth that Peter Younge of the River La Tranche departed this life on or about the month of November in the year 1780 intestate and having left a male child named Peter Younge—his proper issue, a Minor, praying that a Tutor may be elected for the said Minor) the following persons friends of the said deceased he having no relations within this District other than the said minor (viz) Isaac Dolson, Daniel Fields, Amos Weston, Hezekiah Willcox, Peter Shonk, Thos. Smith, who having made oath upon the Holy Evangelists for to recommend the most proper person to be a Tutor to the said Minor and have therefore recommended the said Isaac Dolson of River La Tranche, Yeoman, being the nearest friend of the said Deceased as a proper person—

The said Isaas Dolson having accepted of the charge with the consent and approbation of the said Minor here present and have taken the oath of a Tutor obliging himself to make a faithful Inventory of the Intestate Estate in presence of such of the

said deceased's friends or others as may be called upon to witness the same.

Wherefore, I, the said William Dummer Powell, Esquire, have taken the above recommendation into consideration and homologate the same accordingly.

(sd) Daniel Field
(sd) Heziakiah Willcox
(sd) Isaac Dolson
his
Jacob X Quant
marque
his
Peter X Shonk
marque
his
Amos X Weston
mark
Thos. Smith

(sd) Wm. Dummer Powell, J. C. P.
(sd) T. Smith, C. C. P.

February 24, 1791, a Family Council was held (apparently at Powell's house) at which a Tutrice and Subrogé Tuteur were selected for the minor children of Michel Roy late of the Parish of L'Assumption (Sandwich). This was attended by his widow Jeanne Viller, Louis Villar dit St. Louis, her brother, Thomas Pajotte, her brother-in-law, and François Morors (?) Simon Droulliot, Jean Baptiste Antallia, Joseph Boudy and Joseph Pouget friends: and they nominated the widow, Tutrice, and Louis Villar dit St. Louis, Subrogé Tuteur for the infants.[27]

The widow filed her inventory forthwith containing her accounts of receipts and disbursements in full, showing a balance of 4249 livres "ancient shillings of Que-

bec"—this was passed by the Court and signed by Thomas Smith as "Greffier" or Clerk.

All this record is in French.

There was no proceeding of this character in the English law.

There were indeed Guardians who corresponded roughly to Tuteurs. Leaving aside the father or in a few cases the mother who were the Guardians by nature "and until the age of 14 the Guardian for nurture" there were the "Guardian in socage" the next of kin to whom the land of an infant could not descend who lost his ward when the ward was 14, the "Guardian by will" authorized by the Statute of 1660, 12 Charles II c. 24, and the old "Guardian in Chivalry" who made money out of his ward. In none of these had the family any say. Then, too, the infant might be made a Ward of Chancery. The Family Council was unknown to our law but forms part of the Civil law and is in full force in our Sister Province of Quebec.

So far we have been concerned only with the selection of persons to guard the infant of a deceased person as Tuteur or as Subrogé Tuteur to watch his interests in the passing of accounts of those who were administrating his estate.

But the practice had a wider scope.

October 7, 1790, a Family Council, "an assembly of Relations and Friends of Philip Dejean", was called at the instance of James May of Detroit, his brother-in-law.

Repeating here the story already told in Chapter II *ante*, Philip Dejean had received a Commission as Judge

from one of the Governors of Detroit and imagined himself justified in trying capital cases: he tried with a jury two persons charged with felony and sentenced them to be hanged—one certainly was hanged, the other is said to have escaped by acting as hangman—a Grand Jury at Montreal indicted both Dejean and the Governor for murder and Dejean left the country. His wife was dead, leaving an infant son, Pierre, whose interest required to be looked after and his uncle, James May, applied for an assembly. There attended Robert Navarre, Sr., "Grand-unkle," François Navarre, "grand-cousin", Dominique St Cosme, "unkle", Lambert Beaubien, "Grand Cousin", James May, "unkle", also Joncair De Chabut, and Walter Roe,[28] Esquire, friends, and they nominated Antoine Beaubien "Grand-cousin of the said Minor . . . . to be his Tutor and Amable St Cosme, Subroger Tutor". The record proceeds: "And I the said William Dummer Powell Esqre, first Judge have taken the same into Consideration do approve thereof and Homologate the same accordingly".

We have already seen that in the French Canadian Law there was no necessity for probating a will of either real or personal property, the will operating *proprio vigore;* consequently where a deceased had left a will there was no need of applying to the Courts.

But in the case of an intestate there required to be some one to manage and wind up the estate—such a person in that law was called "Curateur."[29]

An application for Curáteur might be made by a creditor of the deceased. August 26, 1789, James Fraser of Detroit,[30] merchant, a creditor of the late

John Casety of Detroit, merchant, who had died intestate, applied for a meeting of the friends of Casety to elect a Curator for the vacant succession. There met Messrs. John Asken, Jr., William Robertson, John Richardson, Richard Pollard, John Martin, William Monforton and Walter Roe. Walter Roe swore that he had gone to the residence of Mrs. Therese Baby, widow of the deceased on two several days to advise on the election of a Curator: owing to her indisposition he could not see her but she has sent word by her brother François Baby that she was resolved not to intermeddle in the succession but would allow matters to take their course. James Fraser was unanimously chosen "to administer and take charge of the said succession", and this choice was duly homologated by the Judge.

August 8, 1790, a Curator to the succession of Garret Teller, deceased was selected at a meeting called at the instance of Jacob Visgar, his former partner. There attended Messrs. William Robertson, Walter Roe, Richard Pollard, James Fraser, John Martin, Charles Smyth and Jacob Visgar; and "Jacob Visgar, the only relation of the deceased residing within the jurisdiction of the said Court", was unanimously chosen.

On June 18, 1790, Gabriel Godefroy, Merchant-trader, applied to be appointed Curateur of the intestate estate of François Genié of the Miamis who had died about March 4, 1790: a Council was called and attended by Godefroy, Honoré Genié, brother of the deceased, Alexis Bienvenu, Joseph Pouget, Pierre Durand, François Coté, Jean Baptiste Cicot, François Pepin,[31] friends of the deceased—Godefroy was elected.

June 24, 1790, Antoine Laselle becomes Curateur of the vacant succession of the late Charles Desforges dit St. Maurice of Miami, blacksmith, intestate, on election by Messrs. François Desforges dit St. Maurice, son of the deceased, Charles Smyth, James May, Gregor McGregor, Alexis Maisonville, Joncair De Chabut and Porlier Benac, friends.

September 2, 1790, William Groesbeck of Detroit, merchant, was chosen Curator of the vacant succession of the late Garret Greverat of Detroit, silversmith, at his own instance, he being a creditor, and the "assembly of the relations of the deceased" being composed of himself (who was an uncle of the deceased), Jacob Harson, brother-in-law of the deceased, (and also of William Groesbeck), John Burrell, Alexander McKenzie, James Abbott, Charles Vallié and John Dodamead, friends of the deceased—Groesbeck "took the oath of a Curator obliging himself to make a faithful Inventory of the Intestate Estate in the presence of the creditors and others interested or duly called upon to be present and to return the same to the said Court untill further order in the premises".

November 25, 1790, Pierre Branconnin and High Howard of Detroit were jointly chosen as Curateurs of the intestate estate of the late Joseph Bourdon dit Labreche of La Rivière aux Raisin, Trader, being chosen by an assembly composed of Messrs. Jacques Rolland, brother-in-law of the deceased, Jacques Gaguière, Joseph L'anglois, Jean Baptiste Bourdeaux, Jacques Granger, Louison Dragon and Hugh Howard, friends of the deceased.

March 7, 1791, the "friends and relations of the deceased John McPherson of Detroit, Trader", who had died intestate at the River Huron near Sandusky about November 15, 1790, were to be convened at the instance of William and David Robertson, a well-known Detroit firm of traders. McPherson had no relations within the jurisdiction of the Court; but there met Richard Pollard, James Martin, James McIntosh, Alexander McKenzie, George Jamieson, William Christy and the lawyer, Walter Roe, friends of the deceased, and they elected David Robertson, "Curator to rule, govern and administer the said succession."

April 7, 1791, Nathan Williams of the Parish of St. Anne's, Detroit, merchant, was elected Curator of the vacant succession of the late James Bennet of Niagara but formerly of Detroit, merchant—the deceased had no relations within the jurisdiction of the Court but his friends, Nathan Williams, George Meldrum, William Park, George Leith, Angus McIntosh, George Lyons, James May and David Robertson, all of whom sign the record in clear, bold and literate handwriting, unanimously selected Williams.

1791, May 17, at L'Assomption were to meet a competent number of the friends of Mrs. Mary Crofton, late of Detroit, deceased, intestate, to select a Curator at the instance of George McDougall, Attorney by Procuration for Mrs. Philo Letitia Thompson of Montreal, Milliner, the principal creditor of the deceased—something, however, seems to have happened to prevent the meeting, as the blanks in the records are not filled in.

August 11, 1791, George Leith and William Shepherd, Traders, of Detroit, were elected joint Curators to the intestate estate of Thomas Shepherd who had been in partnership with Leith under the firm name, Leith and Shepherd. William Park, George Leith, John Martin, David Robertson, James May, George Ironside and Nathan Williams took part. George Leith at once represented to the Judge that, owing to the temporary absence of William Shepherd, it was necessary in the interests of all, that a Curator *ad hoc* should be appointed until the arrival of William Shepherd: George Leith was chosen.

April 1, 1790, William Hands of Detroit, Merchant, was elected Curator of the intestate succession of the late Nicholas Lorraine of the Miamis Town, Trader, at a meeting attended by Jean Baptiste Chapperton, brother-in-law of the deceased, William Hands, Robert Abbott, William Christie, Alexander Clark, Walter Roe, and Thomas Smith, friends of the deceased.

This was at the instance of the lawyer, Walter Roe, Attorney for James Abbott of Detroit, Merchant.

It was ordered that William Hands as "Curator to the said vacant succession" was "to make Inventory of the Estate of the deceased in the said District but not to proceed to the Distribution thereof until the widow of the deceased now absent shall relinquish her claim to the administration and at the same time the said William Hands made oath that he would assiduously collect the Estate and effects of the said deceased and thereof a faithful Inventory make and return to the Court".[32]

August 26, 1790, (the date is given 1789 in the record, but that is a clear mistake) Cecil Campau widow of Thomas Williams, late of Detroit, Merchant, had an assembly of his relations and friends to elect a Curator to his vacant succession. Messrs. John Askin, William Robertson, Richard Pollard, John Richardson, John Martin and William Monforton, friends along with Joseph Campau, brother of the widow, attended and elected James Fraser of Detroit, Merchant, Curator.

The story may fitly end with an account of another proceeding which well illustrates the value of the Prerogative Court.

We have already spoken of Philip Dejean: he left the District in 1789 and remained out of British Dominions without giving any certain intelligence of his place of residence—his property had to be looked after, and, July 8, 1790, James May, his brother-in-law, applied to the Court to allow an assembly of his relations and friends to be called to elect a Curator of his estate. A meeting was called, July 8, 1790, at which attended Gregor Mcgregor (the Sheriff) Jonathan Schieffelin, William Hands, Thomas Smith (Clerk of the Court) Charles Smyth (afterwards Clerk of the Court) James May and Jean Marie Beaubien—James May was elected Curator to the abandoned estate of the said Philip Dejean "to administer and take charge of the said abandoned estate".

We can now see the advantages of this Prerogative Court. It is true that it could not grant Letters of Probate as could the Prerogative Courts in old Quebec —for that power was given by Special Commission not

granted to the Judges in the "Upper Country". But this in the French Law was wholly unnecessary. It did not and could not for the same reason grant Letters of Administration but everything an Administrator could do could be done by the Curateur who was, indeed, approved by the Court, but who was selected by the relatives and friends of the deceased. The oath and duties of the Curateur and those of the Administrator were practically identical, and the fact that the Curateur was selected by the family and friends of the deceased may well be considered as counterbalancing the security the Administrator must give which the Curateur did not—in either case the Judge had to be satisfied with him.

The power of appointing a Tuteur to look after the infant personally until majority was not in English law a function of the Court—the Bishop's Ordinary did indeed claim in certain instances to appoint such a Guardian until the infant was of the age of 14—but that claim had in later years been considered an assumption.[33] The Court of Chancery had undoubtedly the power of appointing a Guardian or Committee to the Person to a Ward in Chancery. But there was no general practice such as we see in the Prerogative Court with its Family Council.

The duties of the Subrogé Tuteur were in English law performed by the Guardian or in the case of a Ward in Chancery, the Committee of the Estate, generally but not universally the same person as the Committee of the Person.

There was no such proceeding as appointing a Curator of the Estate of one who absented himself.

It is of interest to trace how our Upper Canada and Ontario legislators have "caught up" with the original law of the Province.

When, in 1792, the English law was definitely and finally introduced by the Provincial Act, 32 George III, c. 1., wills of personalty immediately lost their proper force and in order to be effective it became necessary to admit them to Probate.

In 1793 to meet this want an Act was passed, 33 George III c. 8 (U. C.), which created a Court of Probate in the Province with the Lieutenant Governor presiding and a Surrogate Court in each District with "a Surrogate to preside as Judge in each of such Courts"[34]—these Courts were "for the purpose of granting probate of wills and letters of administration of the goods of persons dying intestate".[35] So far as Michigan is concerned the story may well stop here, but an Ontario lawyer may be allowed to continue. The Family Council or Assembly of Relations and Friends never reappeared in our law. This legislation of 1793 provided for the care of the estate of a deceased testate or intestate,[36] but the Courts thereby created had no jurisdiction over Infants, and it was not until 1827 that power was given in this Canadian Province to "the Judges of the Provincial Court of Probate and the Judges of the Surrogate Courts . . . . to appoint some suitable and discreet person or persons to be Guardian or Guardians of" an Infant "not having a father living". The power of the Court is somewhat enlarged by subsequent legis-

lation (see Revised Statutes of Ontario, 1914, cap. 153, secs. 26, sqq.) but no power even yet exists to appoint a Guardian under the circumstances under which a Tuteur was appointed to the infant child of Philip Dejean—simply because the father was absent and the mother dead.

As to the care of the estates of those absenting themselves from the Province as did Philip Dejean, our Ontario law had until recently (except in case of Bankruptcy) no machinery.

In 1920 the extraordinary disappearance of Ambrose Small, a Toronto millionaire, which is still an unexplained mystery, drew the attention of the authorities to this defect in our law, and The Absentee Act, (1920), 10-11 George V, c. 36, (Ont.), was passed enabling the Supreme Court (not the Surrogate Court) to make an order for the administration of the property of an absentee—that is, "one who, having had his usual place of residence or domicile in Ontario, has disappeared, whose whereabouts are unknown and as to whom there is no knowledge as to whether he is alive or dead". It will be seen that even this does not go so far as the original practice: from contemporary documents it is quite certain that Dejean was known to be alive and that he was keeping out of the way of the indictment for murder.

But it took us more than a century and a quarter even to approach the old law in that regard.

And it must be admitted that His Majesty's Prerogative Court for the District of Hesse did its work well.[37]

NOTES

Chapter I

1. The claims of New York are well known: e. g., see Winsor, *Narrative and Critical History of America,* IV, 429. Governor Denonville writing of the Pretensions of Governor Dongan of New York, even in 1685, says: "Missilimakinak is theirs. They have taken its latitude, have been to trade there with our Outawas and Huron Indians, who received them cordially on account of the bargains they gave by selling them merchandise for beaver at a much higher price than we. Unfortunately we had but very few Frenchmen there at that time."

The claims of Vermont and Connecticut are perhaps less well known.

Col. John Graves Simcoe, afterwards the first Lieutenant Governor of Upper Canada, writing from Wolford Lodge, Devon, December 3, 1789, to (Sir) Evan Nepean says, *inter alia:*— "The Inhabitants of Vermont are a brave, virtuous, and English race of People, descendants of the best Families in the Country: the Pierpoints, Seymours, Stanleys, &c., Episcopalians and Enemies to the New Yorkers and Congress. They claim the territories on which Michillimackinac and Detroit now stand, and are disgusted with the United States, whose policy has allotted them to Connecticut." *Wolford Simcoe Papers* (MSS.) in my possession, Vol. 1, Bk. 1, pp. 7-11: *The Correspondence of Governor John Graves Simcoe,* edited by General E. A. Cruikshank, Ontario Historical Society, Toronto, 1923, I, 7, 8.

2. The Articles of Capitulation of Quebec have been frequently printed and those of Montreal more frequently. These Articles can conveniently be consulted in the exceedingly valuable publication by the Government of Canada (Archives Department) *Documents relating to the Constitutional History of*

Canada, 1759-1791, edited by Drs. Adam Shortt and Arthur G. Doughty.—I quote from the second and improved edition of 1918. The Quebec Articles in French and English are on pp. 1-7: the Montreal Articles pp. 7-36—the latter in French are also reprinted in Kingsford's *History of Canada,* IV, pp. 417-433. (N. B. The first named work will be cited thus: *S. & D.*)

3. Joseph Poupart Le Fleur was a merchant in Detroit: 4 *Mich. Hist. Colls.,* 75, 76: his name appears in the list of census roll of Detroit, 1782, as Joseph Poupar: 10 *do. do. do.,* 610. A branch of the family in the Province of Quebec spell the name Poupore; other spellings were Poupart, Poupard.

4. Brehme (or Brehm) remained in Detroit for some time, 10 *do. do. do.,* 22.

5. The story of Major Robert Rogers' mission is found in an exceedingly rare book: *Journals of Major Robert Rogers,* first published by J. Millan, Bookseller, Whitehall, 1765, 8 vo., pp. 237, probably by subscription: it was reprinted in 1769 in Dublin by R. Acheson and in abstract by Luther Roby at Concord, N. H., in 1831. A very convenient reprint with admirable notes by Franklin B. Hough, was published by Joel Munsell's Sons, Albany, 1883—I quote from this reprint.

Parkman, who certainly did not like Rogers, gives full credit to this work—Parkman: *The Conspiracy of Pontiac,* Champlain Edition, Little, Brown & Co., Boston, 1898, p. 170 (n): "Although Rogers, especially where his pecuniary interest was concerned was far from scrupulous, I have no hesitation in following his account of the expedition of the lakes."

6. Dr. Almon Ernest Parkins in his *The Historical Geography of Detroit,* Lansing, 1918, says, p. 79:—"Major Rogers was sent in November, 1760, to receive the surrender of Detroit" (crediting Campbell's *Political History of Michigan,* p. 109). But on p. 85, the correct date is given, "early in September, 1760". Rogers, *op. cit.,* p. 178, is specific and definite.

7. I fail to understand Dr. Parkins, *op. cit.,* p. 85:—"He reached Detroit, November 29 . . . The French commandant,

perceiving that resistance would be futile, surrendered the post". Until he received Vaudreuil's letter, de Belêtre had the right to consider Rogers' communications as a mere *ruse de guerre* and to resist, as indeed he seems to have done by stirring up the Indians against Rogers; but after the receipt of Vaudreuil's letter, he could not resist—such a course would have been good ground for Court Martial and sentence of death.

8. These periods are fixed from the point of view of Law and the Courts—these being the subjects of the present work.

9. *S. & D.*, pp. 99, 100, 115. In two Addresses, the one, *Benjamin Franklin and Canada*, before the Empire Club of Canada at Toronto, November 15, 1923, and the other, *Benjamin Franklin's Mission to Canada and the Causes of its Failure*, before the Historical Society of Pennsylvania, December 1, 1923 (see *The Pennsylvania Magazine of History and Biography*, Vol. 48 (1924) pp. 97, 111, *sqq.*) I have given a full account of Benjamin Franklin's part in retaining Canada in the British Empire.

10. Sir Charles Wyndham, second Earl of Egremont (1710-1763) originally a Tory became a Whig: he joined Fox and when the elder Pitt resigned, succeeded him, October 1761, as Secretary of State for the Southern Department. (Haydn's *Book of Dignities* is in error, p. 224, in assigning him to the Northern Department.) It is said of him that "he used no exercise and could not be kept from eating": he died suddenly of apoplexy.

11. The "Lords of Trade" were an anomalous body differently constituted at different times: at this time, they were consulted on practically all Colonial subjects—the present "Board of Trade" is their successor.

12. For the facts stated in the Text see the documents, *S. & D.*, pp. 127, 128, 139, 140, 152, 167.

13. (1774), 14 George III, c. 83. (Imp.)

14. The expression "Northward to the Southern Boundary,

&c" gave rise to a wellknown dispute in Canadian political circles—the Dominion through Sir John A. Macdonald and his Party claimed that "Northward" meant "due North", the Province of Ontario through Sir Oliver Mowat and his Party that "Northward" meant "Northerly along the River Mississippi". I have thus told the story in an Address, *Settlement of International Disputes:* before the Royal Canadian Institute at Toronto, February 28, 1914.

By the British North America Act (1867), the Province of Ontario was given the same limits as the former Province of Upper Canada. In 1870, by the Dominion Act, 33 Vic., c. 3, the Province of Manitoba was formed with its eastern boundary at the meridian of 96° W. L. At once there was a movement in Ontario, the Government of that province claiming that it went further West than 96° W. L., although this had long been considered in fact her western limit. Many communications passed between the Governments, but without result. Then in 1876 an Act was passed (39 Vic., c. 21), extending the limits of Manitoba to the "westerly boundary of Ontario". The Dominion and Manitoba claimed that the westerly boundary was about six miles east of Port Arthur. Armed forces of the Provinces of Manitoba and Ontario took possession of Port Arthur; but the scandal was abated by an agreement to arbitrate, December 18th, 1883, by the Dominion and the Province. Ontario named William Buell Richards, Chief Justice of the Province, and when he became Chief Justice of Canada, his successor Robert A. Harrison; the Dominion named Sir Francis Hincks, and the two Governments jointly Sir Edward Thornton, the British Ambassador at Washington.

These Arbitrators made, August 3rd, 1878, a unanimous award in favour of the Ontario contention, which by this time was in reality limited to the generally recognized boundary. This was at once accepted by Ontario, but the Dominion refused to ratify the award. At length in 1883, the two Provinces concerned agreed to submit to the Judicial Committee of the Privy Council three questions: (1) whether the award was binding? (2) if not,

what was the true boundary? and (3) what legislation was necessary to make the decision effectual?

The Judicial Committee, August 11th, 1884, decided (1) in the absence of Dominion legislation the award was not binding, (2) the award laid down the boundary correctly, and (3) Imperial legislation was desirable (without saying it was necessary).

The Imperial Act (1889), 52 and 53 Vic., c. 28, carried the decision into effect, and ended the controversy.

15. I do not discuss here the provisions in the Quebec Act concerning the Roman Catholic religion—this is quite foreign to my subject. It is of course well known that the Continental Congress raised a loud and persistent outcry against the Quebec Act as well in that respect as in others.

The celebrated Suffolk County (Pa.) Resolutions, passed September 6, 1774, were the first (so far as I can find) which publicly expressed the objection of the Colonist outside of Canada to the religious features of the Quebec Act. "10—That the late Act of Parliament for establishing the Roman Catholic Religion and the French laws in that extensive country, now called Canada, is dangerous in an extreme degree to the Protestant religion and to the civil rights and liberties of all Americans; and therefore, as men and Protestant Christians, we are indispensably obliged to take all proper measures for our security."

It was not long before the Continental Congress spoke out—September 28, 1774, after condemning the Statutes, (1764) 4 George 3, c. 34; (1765) 5 George 3, c. 35; (1766), 6 George 3, c. 52; (1767), 7 George 3, c. 41 and 46; (1768), 8 George 3, c. 22, as "subversive of American rights," Congress resolved, condemning "the Act passed in the same [last] session for establishing the Roman Catholic religion in the Province of Quebec, abolishing the equitable system of English law and enabling a tyranny there to the great danger from so total a dissimilarity of Religion, Law, and Government of the neighbouring British Colonies by the assistance of whose blood and treasure, the said country was conquered from France."

The Address to the People of Great Britain, adopted October 21, 1774, complained that "by another Act, the dominion of Canada is to be so extended, modelled and governed as that by being disunited from us, detached from our interests by civil and religious prejudices that by their numbers daily swelling with Catholic Emigrants from Europe and by their devotion to Administration so friendly to their religion they may become formidable to us and on occasion be fit instruments in the hands of power to reduce the ancient free Protestant Colonies to the same state of slavery with themselves. . . . . Nor can we suppress our astonishment that a British Parliament should ever consent to establish in that country a Religion that has deluged your Island in blood and dispersed impiety, bigotry, persecution, murder and rebellion through every part of the world." (Only reverence for the Fathers will enable us to suppress a smile at the rebuke by those themselves soon to become rebels, to the Church for "dispersing rebellion", and perhaps the less said about "bigotry," the better.)

16. French Quebec, La Nouvelle France, had been divided into three Districts, Quebec, Montreal and Three Rivers; by the Ordinance of September 17, 1764, the District of Three Rivers was partitioned between the other two because there was not a sufficient number of Protestant subjects there residing. It was not till long after this date that Three Rivers became again a District.

The District of Montreal was all of the Province west of the River Godfroy on the South and of the River St. Maurice on the north of the St. Lawrence. See Ordinances of September 17, 1764, and February 25, 1777, *S. & D.*, pp. 205, 697, *sqq.*

17. *S. & D.*, p. 954; 4 *Ont. Arch. Rep.*, (1906), p. 157.

18. This Treaty is printed in full in *S. & D.*, pp. 726, *sqq.* *Treaties and Conventions concluded between the United States of America and other Powers*, Washington, 1889, pp. 575 sqq. It was concluded, September 3, 1783; Ratified by the Continental Congress, January 14, 1784; Proclaimed, January 14, 1784.

19. "While the conclusion of peace would once more open the Courts of the Country to British subjects, there existed on the statute books of various States acts which were passed during the war, and which, remaining in force after its termination, would continue to bar the recovery of debts. Chief among these were the confiscation and sequestration acts, which authorized the payment of debts due to British subjects into the State treasuries and made such payment a full discharge of the obligation of the debtor."

The American Commissioners seem to have thought that the Treaty was binding on the several States—in reporting to their Government, they said: "We have been informed that some of the States had confiscated British debts; but, although each State has a right to bind its own citizens, yet in our opinion it appertains solely to Congress, in whom exclusively are vested the rights of making war and peace, to pass acts against the subjects of a power with which the confederacy may be at war. It therefore only remained for us to consider whether this article is founded in justice and good policy. In our opinion no acts of government could dissolve the obligations of good faith resulting from lawful contracts between individuals of the two countries prior to the war. We knew that some of the British creditors were making common cause with the refugees and other adversaries of our independence; besides, sacrificing private justice to reasons of state and political convenience is always an odious measure; and the purity of our reputation in this respect in all foreign commercial countries is of infinitely more importance to us than all the sums in question. It may also be remarked that American and British creditors are placed on an equal footing."

"But, though the treaty thus provided for the recovery of debts, the Government of the United States was unable to execute it. The States refused to repeal their impeditive enactments, and the State courts continued to enforce them. The government of the confederation was practically powerless, and unable to afford a remedy."

It is unnecessary to particularize. Dr. John Bassett Moore in

his monumental *History and Digest of the International Arbitrations to which the United States has been a Party,* Washington, 1898, Vol. 1, pp. 271-299 gives a reasonably full account. He cannot be accused of pro-British leaning: the above quotations are taken from this invaluable work.

A small work of extraordinary interest was published at Philadelphia, 1800, by one of the American Commissioners under Article XI of Jay's Treaty; *A Brief Statement of Opinions* . . . . . this may be consulted with advantage.

I know that American historians with practical unanimity have expressed the opinion that the reason given by Britain was a mere pretext and that her real motive in retaining the Border Ports was to keep the fur trade in her own hands. I do not enter into controversy, but I venture to suggest that these writers were either unacquainted with or failed to pay sufficient attention to the hopes and expectations expressed time and again in official communications between the Government at Westminster and the Governors in Canada, that the difficulties between the countries might be speedily arranged and the Ports given up.

The case in the Supreme Court of the United States, Ware v. Hylton, et al., (1796) 3 Dallas, 199, should be read by all who desire to understand the feeling at the time. Virginia set up the non-delivery of the Ports as a good reason for confiscation of the debts—an amusing retroversion.

See my Article *When International Arbitration Failed.* 40 Canadian Law Times, (May, 1920), pp. 352, sqq; 8 Essays and Addresses.

20. The Royal Message was presented to the House of Commons, February 25, 1791; it reads: "His Majesty thinks it proper to acquaint the House of Commons, that it appears to his majesty, that it would be for the benefit of his majesty's subjects in his province of Quebec, that the same should be divided into two separate provinces, to be called the province of Upper Canada, and the province of Lower Canada; and that it is accordingly his majesty's intention so to divide the same, whenever his majesty shall be enabled by act of parliament to establish the

necessary regulations for the government of the said provinces. His majesty therefore recommends this object to the consideration of this House.

"His majesty also recommends it to this House, to consider of such provisions as may be necessary to enable his majesty to make a permanent appropriation of lands in the said provinces, for the support and maintenance of a Protestant clergy within the same, in proportion to such lands as have been already granted within the same by his Majesty; and it is his majesty's desire, that such provision may be made, with respect to all future grants of land within the said provinces respectively, as may best conduce to the same object, in proportion to such increase as may happen in the population and cultivation of the said provinces; and for this purpose his majesty consents, that such provisions or regulations may be made by this House, respecting all future grants of land to be made by his majesty within the said provinces, as this House shall think fit. G. R."

28 *Parliamentary History of England* (Hansard) Col. 1271.

4 *Ontario Archives Report* (1906), pp. 158, 159.

The Canada or Constitutional Act, (1791), 31 George III, c. 31, (Imp.), will be found in any collection of British Statutes, also in *S. & D.*, pp. 1031, *sqq.*

After the Act was passed, the King in Council, August 17, 1791, referred to the Lords of Trade what should be done; they reported, August 19, and at a meeting of the Council, August 24, an Order was issued dividing the Province and directing Henry Dundas (afterwards Lord Melville) one of the Secretaries of State to "prepare a Warrant to be passed under His Majesty's Royal Sign Manual to Authorize the Governor or Lieutenant Governor of the Province of Quebec or the Person administering the Government there to fix and Declare such day as They shall judge most advisable for the Commencement within the Province of Upper Canada, and the Province of Lower Canada respectively, of the said Act passed in the last Session of Parliament entitled 'An Act to repeal certain parts of An Act passed in the Fourteenth year of His Majesty's Reign, entitled An Act for

making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province'—Provided that such Day, so to be fixed and declared for the Commencement of the said Act, within the said Two provinces respectively, shall not be later than the Thirty first Day of December, One thousand seven hundred and ninety one."

Documents relating to The Constitutional History of Canada, 1791, 1818, by Doughty and McArthur, Ottawa, 1914 (Dominion Archives publication) pp. 3-5.: 4 *Ontario Archives Report* (1906), pp. 158-160. The Royal Warrant is copied in the *Can. Arch.,* Q. 59 B, p. 199: Clarke's Proclamation in 4 *Ontario Archives Report* (1906), pp. 160, 161.

21. (1792) 32 George III, c. 1, s. 3, (U. C.): the second Act of the same Session, 32 George III, c. 2, (U. C.), provided for trial after December 21, 1792, by jury of "all and every issue and issues of fact. . . . . in any action real, personal or mixed . . . in any of His Majesty's Courts of Justice within the Province."

22. (1792) 32 George III, c. 8, s. 5, (U. C.) The other three Upper Canadian Districts also lost their German names. Luneburg became the Eastern District, Mecklenburg, the Midland District and Nassau, the Home District, *do., do.* ss. 2, 3, 4. The provisions for Gaol and Court House will be found in ss. 7-13 of the Act.

23. At that time Acts were considered to commence on the first day of the Session in which they were passed—this being the English Common Law rule. Consequently this Period began September 17, 1792, although the Act did not receive the Royal Assent and so become law until October 15, 1792: the distinction is of no importance.

It was not until 1801 that the sensible rule was enacted in Upper Canada that Acts did not commence until they received the Royal Assent, (1801) 41 George III, c. 11, (U. C.).

24. (1794) 34 George III, c. 2, (U. C.)

25. Jay's Treaty—a "Treaty of Amity, Commerce and Navigation" concluded November 19, 1794, ratification exchanged at London, October 28, 1795, proclaimed, February 29, 1796. *Treaties and Conventions* &c., *op. cit.*, pp. 379-397. Prof. Samuel Flagg Bemis' *Jay's Treaty*, New York, 1923, pp. 321, sqq.

It will be remembered with what cries of execration the announcement of the terms of this Treaty was received. Jay, to whom it is said that Washington after his first election as President offered the choice of any office in the government and of whom Daniel Webster, later, said "When the spotless ermine of the judicial robe fell on John Jay, it touched nothing less spotless than itself", was denounced by the whole Republican Party as a traitor; he was burned in effigy in Boston, Philadelphia and even his well beloved New York. Alexander Hamilton was stoned at a public meeting for speaking in favor of it and Washington himself had coarse and virulent abuse hurled at him for signing it. The Senate ratified it (except as to one article) but in the House of Representatives the Republicans refused to allow the necessary appropriation to carry it into execution: a Resolution that it should be carried into effect stood 49 to 49 and the strenuous opposition was overcome only, April 30, 1795, by a vote of 51 to 48. It may be confidently asserted that had it not been for Washington's influence, the Treaty would have failed. Time has brought about its revenges. Jay is better and more favorably known by his Treaty than by all his undoubted patriotic services including those in his judicial office. He does not receive very generous or, *me judice*, even fair treatment in Professor Bemis's work already mentioned—it is easy to say that he should have done this or that—he did well, and there is nothing which can be called evidence indicating that he could have done better.

When all is said, Jay's Treaty is the beginning of modern international arbitration and the first of a long series of Treaties between the great English-speaking nations creditable alike to their justice, humanity and common sense.

The story leading up to the ultimate payment by the United

States of the British debts is not a wholly pleasant one,—suffice it here to say that after the failure of an Arbitration, the United States in 1802 paid £600,000 at $4.44 per £ sterling, substantially the Old Par of Exchange.

26. Detroit and Michillimackinac, &c., were for a short time during the War of 1812 in British hands—but never *de jure*.

Notes: Chapter II

1. The principles are well discussed in Wheaton's *Elements of International Law*, 4th Eng. ed., 1904, pp. 484, *sqq*. See Exp. Milligan, 4 Wallace, (S. Ct., U. S.), 14, 127; Exp. Marais (1902) A. C. 109. Sometimes the ordinary Courts are allowed to function, but always *sub modo*.

2. See my Article: *The First British Courts in Canada*, 33 *Yale Law Journal* (April, 1924) pp. 571 *sqq*: also the *Report of the Archives Department of Canada* for 1918.

3. *S. & D.*, pp. 20, 33, 34.

3a. The particulars of this curious case are to be found in *The Papers of Sir William Johnson* published by the University of the State of New York, vol. iii, pp. 887, 895, 896; vol. iv, pp. 95, 96, 100. See also *Can. Arch.*, A 18, 1, p. 224: A 18, 2, p. 330: 19 *Mich. Hist. Colls.*, pp. 151, 160, 161.

4. *S. & D.*, p. 165. That the King had the power by his own simple fiat to change the law in this ceded country is undoubted. "In conquered or ceded countries that have already laws of their own, the King may . . . . alter and change those laws." Blackstone's *Commentaries of the Laws of England*, Bk. I, p. 107.

The celebrated judgment of the Court of King's Bench delivered by Lord Mansfield in Campbell v. Hall, (1774), 1 Cowper's *Reports of Cases adjudged in the Court of King's Bench*, pp. 204, *sqq.*, states the law thus: "It is left by the constitution to the king's authority to grant or refuse a capitulation: if he refuses, and puts the inhabitants to the sword or exterminates them, all the lands belong to him. If he receives the inhabitants under his

protection and grants them their property, he has the power to fix such terms and conditions as he thinks proper. He is intrusted with making the treaty of peace: he may yield up the conquest, or retain it upon what terms he pleases. These powers no man ever disputed, neither has it hitherto been controverted that the king might change part or the whole of the law or political form of government of a conquered dominion."

As Blackstone, *loc. cit.*, sententiously put it: "till he (the King) does actually change them, the ancient laws of the country remain unless such as are against the law of God as in the case of an infidel country".

Lord Mansfield in Campbell v. Hall at p. 209, states as a proposition "too clear to be controverted":—"That the laws of a conquered country continue in force, until they are altered by the conqueror: the absurd exception as to Pagans, mentioned in Calvin's Case, shews the universality and antiquity of the maxim. For that distinction could not exist before the Christian era; and in all probability arose from the mad enthusiasm of the Croisades".

On the same principle, the laws of Spain continued in force in Missouri till after the Territorial Government was organized under Act of Congress, April 7, 1798. Chew v. Calvert, (1818), 1 Walker's Reports, (Missouri), 56: Canal Commissioners v. People, (1830), 5 Wendell's Reports, (Supreme Court of the United States), 461.

Charles Yorke, Attorney General (afterwards Lord Chancellor) and William De Grey, Solicitor General (afterwards Lord Walsingham and Chief Justice of the Court of Common Pleas) in their Report to the Lords of Trade, April 14, 1766, say: "There is not a *Maxim* of the *Common Law* more certain than that a Conquer'd people retain their Antient Customs till the Conqueror shall declare New Laws." *S. & D.*, p. 255. Francis Maseres, Attorney General of Quebec (afterwards Cursitor-Baron of the Exchequer) in a Paper prepared for Carleton and the Council in 1766, says: "Some persons are of opinion that the laws of

Great Britain do at once take place (effect?) in a conquered province, without any authoritative introduction of them either by King or Parliament. But this opinion seems destitute of foundation." *S. & D.*, p. 263, cf. p. 264. Sir James Marriott, Advocate General (afterwards Vice Chancellor and Judge in Admiralty) in his *Plan for a Code of Laws for the Province of Quebec*, 1774, while thinking the Criminal Law was changed by the Conquest, *ipso facto*, says with respect of the civil laws: "A conquered people may be understood to be governed by their ancient laws touching their civil property so long as they remain unchanged by any declaration to the contrary of the new Sovereign power". *S. & D.*, p. 454.

Campbell v. Hall is printed *in extenso* in *S. & D.*, pp. 522-531.

In the Province of Quebec far to the east an Ordinance was passed September 17, 1764, creating civil courts and thus inaugurating civil administration. This Ordinance, *S. & D.*, p. 207, was rightly described as a "very deficient" by the Lords of Trade, September 2, 1765, *S. & D.*, p. 246. The Court of Common Pleas thereby erected was even declared by the Grand Jury at Quebec, October 16, "to be unconstitutional"—and condemned by a much higher authority, The Lords of Trade, in September 2, 1765, *S. & D.*, pp. 213, 243. Of course "unconstitutional" meant contrary to the principles of the British Constitution, not "invalid as being *ultra vires*", which is the meaning of the word now in the United States and occasionally in Canada. See my *Constitution of Canada in Form and in Fact* (Blumenthal Lectures, Columbia University, 1923), New York, pp. 1, 7, 16. Bell v. Burlington, (1915), 34 Ontario Law Reports, 619: Orpen v. Attorney General of Ontario, (1924), 27 Ontario Weekly Notes, 327, 443: 56 Ont. L. R., 327. The former was the connotation in the United States till well within the 19th century: but it is now almost obsolete in that country having given way to the meaning "contrary to the written Constitution."

5. Mr. St. Cosme was Lieutenant Pierre St. Cosme who became a loyal British subject—see 5 *Mich. Hist. Colls.*, p. 533: 8

do. do. do., pp. 297. In 1778, he was appointed one of the Commissioners (along with Baby, Sterling and Thomas Williams) for repairing the pickets around the Town of Detroit which, as the contributing inhabitants said, was "an absolute necessity . . . as well for the public good as our own particular and common safety", 8 *do. do. do.*, p. 465. It may be noted that Philippe Dejean was one of the signatories.

In 1778, we find him a Lieutenant in the Volunteer Militia of Detroit. *Can. Arch.* B 122, p. 179: 9 *Mich. Hist. Colls.*, p. 484: and in 1778, also he is described as "ci-devant juge en ce poste" in a Marriage Contract between his daughter, Theotiste, with Philippe Dejean, July 25, 1778: *Can. Arch.*, M 84, p. 912. In 1779, he appears with his wife in the Survey of the Settlement of Detroit taken March 31, 1779, under oath. He died at Detroit, September 20, 1787, aged 66. *Can. Arch.*, B 122, p. 318: 10 *Mich. Hist. Colls.*, p. 318. Other references to him are *Can. Arch.*, M. 84, pp. 64, 105, 912, 1027: M 88, p. 253: M. 77.

6. Gabriel Le Grand was one of those examined by the Court of Enquiry held by the orders of Major Gladwin in respect of the Pontiac Siege. He gave the interesting information:—"that before Canada was taken Pondiac and some Chiefs from Detroit, suspecting a complete conquest on the side of the English, had gone down to Fort Pitt and other Forts on the Communication towards Pennsylvania enquiring the treatment they would have should the English succeed to which was answered that first all the Rivers were to run in Rum, that presents from this great King were to be unlimited, that all sorts of goods were to be in the utmost plenty and so cheap as a Blanket for two Beavers, 4 Raccoons taken for a Beaver, with many other fair promises which they told in the settlement on their return with much insolence. In consequence of which they allowed Rogers with a handful of men to take possession of the Fort and Colony, receiving him with joy, and using Belletre the French Commandant at the same time with much disrespect. That in about a year after Pondiac in particular had been heard to complain

and say the English were liars, which opinion became so general, that a long time before they openly declared themselves in arms, a general discontent was amongst all the Nations, and the chief complaint on that of the prohibition of rum and that the English took six Raccoons for a Beaver, when the French never took but four, with many other complaints more trifling in their nature, such as Annual Congresses promised, &c., so that on the whole they say all the promises the English made were no other than to blindfold and delude them for which they had been often heard to say they would kill all the liars and give their hands to their Fathers." *The Gladwin Manuscripts, 27 Mich. Hist. Colls.*, pp. 662, 663. He became a loyal British subject, 11 *Mich. Hist. Colls.*, p. 363: We find him in 1766 making an interesting statement concerning the taxation levied from the beginning of British rule by Colonel Campbell the first British Commander and his successor Major Gladwin, 8 *Mich. Hist. Colls.*, p. 465.

The "Pontiac Manuscript" is in the same volume, pp. 266, *sqq.;* the passage quoted is on p. 297.

7. The three Currencies then and for long after in vogue were Sterling (i. e. the English currency) Quebec, Halifax or Provincial Currency which was 9/10 the value of Sterling, and York Currency of 8 shillings to the dollar—and the York pound was equal to $2.50. The York shilling or Yorker as a standard of value was in use in Upper Canada till after the middle of the last century—it had no coin to represent it but the English sixpence was considered an equivalent. See my Address before the Michigan State Bar Association: "The First Judge at Detroit and his Court." The Commission was signed by Robert Bayard, Major Commanding at Detroit, July 28, 1767: *Can. Arch.*, M. 88, p. 48. It reads thus:

"Whereas it has been represented to me by the trading people and others reciding at Detroit that some tempery form of Justice for the recovery of Debts, etc., was become absolutely necessary, and having taken this matter into consideration and finding

the utility of such an establishment, I have accordingly granted them a Tempory court of Justice to be held twice in evry month at Detroit to decide all actions of Debts, Bonds, bills, contracts and trespasses above the sum of five pounds New York Currency and confiding in Philip Dejean for his uprightness and integrity I do hereby nominate and appoint him the second Judge of the said court of Justice at Detroit.

"Given under my hand and seal at Detroit the 28th Day of July 1767.

Sign'd
"ROBT. BAYARD
"Major commg at Detroit

"To Philip Dejean Esq.

His Commission as Justice of the Peace: *Can. Arch.*, M 88, p. 47: reads thus:

"Philip Dejean

"By George Turnbull Esq. Capt. in the 2nd Battn of his Majestys 60th Royal American Regiment commandant of Detroit and its Dependencies.

"To Philip Dejean Merchant in Detroit

"I do hereby nominate and appoint you Justice of the peace to inquire into all complaints that shall come before you, for which purpose you are hereby authorized to examine by oath such Evidences as shall be necessary that the truth of the matter may be better known. Provided always that you give no Judgment or final award, but at their joint request and which by bond they bind themselves to abide by, but settle the determination of the matter by arbitration, which they are likewise to give their bond to abide by, One or two persons to be chosen by each and if they cannot agree and have named two only You name a third, and if four a fifth, and their Determination or award to be approved by me before put in Execution; I further authorise and impower you to act as chief and sole notary Tabellion by drawing wills, Deeds, Etc., proper for that department the same to be done in English only, and I also appoint you sole Vendue

master for such sales as may happen here in the usual and accustomed manner.

"Given under my hand and seal at Detroit this 21st day of April 1767. "(Sign'd)

"GEO. TURNBULL."

It would seem that there was some complaint made of Dejean as to his performance of the duties of his office. We find a Court of Inquiry ordered which brought in its Report exonerating him, May 21, 1768. *Can. Arch.*, M 88, p. 37. It reads thus:

"Proceedings
of a Court
of Inquiry

"Detroit May 21st 1768.

"By order of George Turnbull, Esq. Captain in the second Battalion of his Majestys 60th Regiment Commandant of Detroit and its Dependencies at the request of Philip Dejean Esq Justice of the Peace, in consequence of sundry complaints made against him, we the undernamed subscribers haveing Duely heard and carefully examined into the grievances set forth by the said Philip Dejean Esq are of opinion.

"First That the Fees established by the committee appointed by Major Robert Bayard on the establishment of the court of Justice at Detroit are just and reasonable and ought not to be less.

"Secondly That every Prisoner confin'd in the Guard House whether for Debt or misdemeanor shall on his being sett at liberty pay one Dollar, and every Batteau or Canoe arriveing here loaded with merchandize belonging to any Person or persons not possessing in property any lot or building within this fort shall pay two dollars, and the monies arising from thence to be aply'd as in the time of the French Government to keep in Good and sufficient Repair the Fortification around this town, as will more fully appear in our former petition to Capt. Turnbull for that purpose.

"Thirdly No person haveing appear'd before us to make any

complaints against said Philip DeJean with respect to his publick office, we are of opinion that they were ill founded and without cause.

"Given under our hands at Detroit May the 21st 1768.

James Sterling	John Robison
Col. Andrews	Eustache Gamelin
T. Williams	J. Cabasie
Willm Edgar	Cicotte
A. Barthe	F. Mollere

(A true copy)

(Signed) "Geo. Turnbull."

8. The petition was properly addressed to General Gage—he had in 1763 been appointed Commander in Chief in North America with his Head Quarters at New York during the absence of Amherst: this appointment was confirmed the following year and he retained it until 1772—he was the absolute autocrat as to Courts in all the territory not under organized civil government.

9. The ancient practice of the Kings of England sitting in their own Courts disappeared, and the notorious attempt of King James I to renew it met with defeat at the hands of the courageous Coke and was never renewed. 12 *Coke's Reports,* 65. But while the Monarch cannot act as Judge, his officers commanding may and this jurisdiction is not taken away by the creation of Courts and the Courts may be abolished at will.

Notes: Chapter III

1. At least civil government was introduced in theory: but in the earlier part of the Period, it was *sub modo* only.

The Petition reads as follows:

"Petition au Général Gage.

"Nous Soussignés habitans du Detroit prenons la liberté de representer à votre excellence la joie et la satisfaction que nous avons du Choix que Mr la Capitaine Turnbull à fait du Sieur Philippe Dejean pour Juge, Vû qu'il entend l'Anglais et le

français, et qu'il est bien plus en état par Consequent de décider les difficultés qui peuvent survenir Entre les Enciens Sujets de Sa Majesté Britannique et les nouveaux

C'est pourquoi nous Vous supplions de vouloir bien lui accorder Votre approbation et Nous avons le plus profond respect

"Notre Général

"Pour Copie "Signé"

"Vos très humbles & très obeissants Serviteurs Pierre St. Cosme, Stephen Lusk, Richd McNeath, Lechlan MacKintosh, Médard Gamelin, Dominique Labrosse, Claude Campau, Joseph Cabassier, Labutte, pere, Potier, M. J. Pouget, Isidor J. Grenier, Charles Moran, Barthe, Marantette Godet, Simon Campau, Ant. Gamelin, Monford."

Translated:

"We the undersigned inhabitants of Detroit take the liberty to express to your Excellency the joy and the satisfaction which we have in the choice which Captain Turnbull has made of Mr. Philip Dejean for Judge, seeing that he understands English and French and that consequently he is well qualified to decide the difficulties which may arise between the Old Subjects (i. e. the English speaking) of His Britannic Majesty and the New Subjects (i. e., the French-Canadians).

"That is the reason that we pray you to be so good as to accord us your approbation—and we have the most profound respect.

"Our General,

"Your very humble and very obedient Servants."

(Signed)

Sir James Marriott, already mentioned, in his *Plan of a Code* &c., 1774, said: "To look into the map, the situation of Detroit sufficiently speaks the propriety of some regulation of justice there: and more especially as it is the mart and entrepôt of the fur trade and the Indian commodities, such a regulation is necessary for the trade and for preserving peace and friendship with the Indian nations resorting thither". *S. & D.*, p. 467.

2. *S. & D.*, p. 572. In the collections of Statutes, this is generally to be found in Sec. 8—sometimes the Statute (1774) 14 George III, c. 83 (Imp.) and other Statutes are printed without division into sections.

3. This Edit is to be found in *Edits Ordonnances Royaux et Arrêts du Conseil d'Etat du Roi, Concernant le Canada,* Quebec, 1803, Vol. 1, p. 21: in part in Dean Walton's work mentioned *infrâ,* p. 1. See also the authorities referred to by the learned Dean in note (2) on p. 1, all of which have more or less bearing on the subject. Consolidated Statutes of Lower Canada, c. 2 (Preamble): Durocher v. Degré (1901) R. J. Q., 20 S. C. at p. 510. Exchange Bank v. The Queen, 11 A. C. at p. 164: Laureau, *Histoire du Droit Canadien,* Montreal, 1888, Vol 1, p. 138.

4. *Edits Ordonnances Royaux,* &c. Vol. 1, p. 37.

5. "les dits lieux" were sufficiently extensive: they included all the mainland of America from the Amazon to the Oronoco, the Antilles, Canada, Acadia, the Islands and Mainland from the north of Canada to Virginia and Florida, the Coast of Africa from Cape Verde to the Cape of Good Hope and as far inland as the Company could go—the Preamble also mentioned Newfoundland and other Isles and Mainland. *do.do.do.,* Vol. 1, p. 30.

This reminds us of the claim of the Kings of England to be Kings of France, a farce kept up until the end of the 18th Century.

6. Those who are interested should consult Prof. Charles P. Sherman's valuable and exhaustive work, *Roman Law in the Modern World,* Boston, 1917, Vol. 1, ss. 239, 251, 262 (n. 7)—there is a misprint in the reference to Prof. Munro's Article: and another in (n) 8 to S. 263, "Cobam" should be "Coburn". Dean Walton's *Scope and Interpretation of the Civil Code of Lower Canada,* Montreal, 1907: J. B. Munro's *Genesis of Roman Law in America,* 22 Harvard Law Review, p. 579, &c. Some of the conclusions of Dean Walton may be found difficult

to accept, but this is not the place to discuss them; and in any case, it is almost presumptuous to question the opinions of such a master.

Lorman v. Benson, (1860), 8 Michigan Reports, 18 and Coburn v. Harvey, (1864), 19 Wisconsin Reports, (147), 156, may also be looked at—they will be referred to again.

In the former case at p. 25, Mr. Justice Campbell says:—"It is undoubtedly true that at one time the Custom of Paris was in force here. It was expressly abrogated by the Territorial Legislature in 1810".

7. *S. & D.*, p. 206; *Ordinances Made and Passed by the Governor and Council of the Province of Quebec, 1763-1791*, Ottawa The King's Printer (Can. Arch. Publication) 1917, Part I, p. 46; Part II, p. 26.

8. It is to be remembered and may be here repeated that while under the French Regime there were three Districts in Nouvelle France, the District of Three Rivers was not continued by the Ordinance of September 17, 1764; but the Province was divided into two Districts, those of Quebec and Montreal, at the Rivers St. Maurice and Godfroy. Michigan was consequently in the District of Montreal after the Quebec Act.

9. *S. & D.*, p. 307. *Ordinance Made, &c., ut suprâ*, Part II, p. 30.

10. He may have received a new Commission from Henry Hamilton the Commandant and Lieutenant Governor in 1775 or later but that is not certain.

11. *The Northwest during the Revolution* by Hon. Charles I. Walker of Detroit: 3 *Mich. Hist. Colls.*, p. 16.

12. The Royal Instructions to Sir Guy Carleton "Our Captain General and Governor in Chief in and over our Province of Quebec in America and of all Our Territories dependent thereon" dated at the Court of St. James's, January 3, 1775, will be found in *S. & D.*, pp. 594, sqq. In respect of Courts, pp. 600-602.

Perhaps sec. 18 may be here copied: "18. And whereas frequent complaints have heretofore been made of great delays and undue proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered: and it being of the greatest importance to Our service, and to the welfare of Our Plantations, that Justice be everywhere speedily and duly administered; and that all disorders, delays, and other undue Practises in the administration thereof be effectually prevented; We do particularly require you to take especial Care, that in all Courts, where you are or shall be authorized to preside, justice be impartially administered; and that in all other Courts established, or to be established within Our said Province, all Judges, and other Persons therein concerned do likewise perform their several Duties without any delay or partiality."

13. In 1768, a Secretary of State (in addition to the existing two Secretaries) was appointed whose duty was to attend to American affairs, his title being Secretary of State for the Colonies: only four persons filled that office until its abolition in 1782 by the Act, 22 George III, c. 82.

William Legge, the second Earl of Dartmouth, succeeded the Earl of Hillsborough the first incumbent in 1772. Franklin calls him "a truly good man and wishes sincerely a good understanding with the Colonies", although in 1776, he declared against conciliation with the Thirteen Colonies and insisted that overpowering force was the only remedy. He gave up his position in 1776 to Lord George Sackville Germaine, the evil genius of Colonial affairs. During his Secretaryship, Dartmouth was exceedingly solicitous for the welfare of the Colonies, perhaps more particularly, the newly acquired.

Hey had just been elected Member of Parliament for Sandwich and Dartmouth did not expect him to return to Canada: and he did not return till April, 1775: *S. & D.*, p. 586, (n) 1. Hey was a competent but by no means brilliant lawyer; his Draft Ordinance mentioned in the Text is well thought out and admirably

drawn. Had it not been for the troubles in the south it probably would have been adopted almost in its entirety.

14. This Draft Ordinance is given in full in *S. & D.*, pp. 637, sqq.: *Can. Arch.*, C. O. 42, Vol. 14, p. 28. See also notes to *S. & D.*, p. 585.

The Advocate General, Sir James Marriott, in his *Plan for a Code of Laws for the Province of Quebec, 1724; S. & D.* pp. 445 sqq. says:

"It may be also proper to erect, as proposed in the report of the governor and chief justice, a court at Dêtroit, because the settlers there, amounting to about seven thousand persons, are populating very fast and extending themselves, as the people of New York are, towards each other. An objection may be taken to this, that it is not policy to encourage back settlements: but the question seems to be not whether the population of the interior North America should be encouraged in policy; but the fact is, that there is, and will be population there; and that where population is, the dominant power must regulate the settlers, or they will regulate themselves probably to its prejudice. The interior settlements certainly are a material supply and support, both of men and provision, to the exterior on that coast, and serve equally to take off the produce of the mother-country and to make returns by the medium of the sea-ports; but there can be no real distinction as to political good between the inhabitants of the maritime line and those of the back settlements, for they are much connected in view of national strength and benefit; as the radii of a circle all meet in the same common center, and all touch the extreme boundary.

"The great distance of Montreal, one hundred and eighty miles from Quebec, also of Trois Rivieres, and Dêtroit, deserve attention; and it is an argument sufficient for forming three Courts of King's Bench, to save to your Majesty's subjects the great expence of employing for every person, not only his attorney on the spot, but his agent at Quebec, besides the fatigue and expence of travelling himself, and bringing his witnesses from the extreme boundaries of the province, in a very severe climate, I approve,

however, that it should be in the discretionary power of your Majesty's principal attorney-general, to remove any party for safety for a quick and more convenient trial to Quebec; but this should be restrained to cases of treason only."

15. *Ordinances made and passed by the Governor and Council of the Province of Quebec, 1763-1791.* Ottawa, The King's Printer, 1917, Pt. 2, p. 49: *S. & D.*, p. 697.

16. William Robertson, examined before a Committee of the Executive Council at Quebec on the Petition from Detroit shortly to be mentioned in the Text, in answer to the Question as to how the Court of Arbitration was modelled answered: "A General Arbitration Bond was entered into, and every person who signed it bound himself to abide by the decisions of the arbitrators, (they sat in Rotation). Those who submitted their differences to the arbitrators could not be compelled to abide by their decisions; yet the dread of the consequences of refusing to submit to those determinations gave force to their awards; for those who would not obey could not recover debts, and the commanding officer refused to grant them passes to go for their Canoes to the Indian Country: yet still, there were people who refused to abide by their decisions not from unreasonableness nor the injustice of their awards but from a want of inclination to pay their debts. It was agreed by those who signed the general arbitration bond to pay each an equal portion of the expense of any suit of Law which might be carried on against any of them in consequence of their decisions in this Arbitration Court. People who lived in Detroit were compelled to submit or live there as out law'd." *Can. Arch.*, Q. 41, 1, pp. 97, *sqq.*; 11 *Mich. Hist. Colls.*, pp. 631, 632.

17. Examination of William Robertson, *Can. Arch., ut suprâ;* 11 *Mich. Hist. Colls.*, pp. 631, 633, 636, 642.

18. 25 George III, c. 5, *Ordinances, &c.*, Pt. 2, pp. 169-171: Justices of the Peace in the Province of Quebec had been given jurisdiction in civil cases, one Justice up £5 ($20) and two up to £10 ($40); in Quarter Sessions up to £30 ($120)—under

the Ordinance of September 17, 1764, *Ordinances, &c.*, Pt. 1, pp. 46-49: *S. & D.*, p. 205. This power being abused, was taken away by the Ordinance passed February 1, 1770: *Ordinances, &c.*, Pt. 1, p. 26: *S. & D.*, p. 401: the Preamble states that "the powers and authorities . . given to the Justices of the Peace . . . to hear and determine in matters of private property between party and party, instead of answering the good purpose for which they were ordained have become an intolerable Burthen to the Subject and proved the means of great disquiet vexation and oppression".

19. *Can. Arch.*, Q. 27, 1, pp. 326, *sqq.*; 11 *Mich. Hist. Colls.*, pp. 472, *sqq.*

20. From a return made of Suits at Montreal from the Upper Country from August 17, 1787, to July 1, 1788, it appears that during that time there were nine suits in the Court of Common Pleas at Montreal in which inhabitants of Detroit were concerned on accounts amounting in the aggregate to £14314 2 8 (about $57000)—and two of Trespass for £2000 ($8000) each. There were three others from the other parts of the Upper Country. *Can. Arch.*, Q. 41, 1, p. 6; 11 *Mich. Hist. Colls.*, pp. 624, 5.

21. 17 George III, c. 5: *Ordinances, &c.*, Pt. 2, pp. 62, 64: *S. & D.*, pp. 690-2.

22. 27 George III, c. 1: *Ordinances, &c.*, Pt. 2, p. 179. In addition to the Court of King's Bench there could be Courts of Oyer and Terminer and Gaol Delivery presided over by Commissioners who had received a Commission for the purpose—in practice always Judges—these Courts were authorized to try any crime and were intended to provide for the speedy trial of offences. No such Court is known to have dealt with a Michigan case during this Period and I here pay no further attention to them. 17 George III, c. 5, *ut suprâ*, note (7).

23. The Statute under which Justices of the Peace were first commissioned was the Statute of Westminster, 1360, 34 Edward III, c. 1, which gave them power "doier & terminer a la suite le Roi tote manere de felonies & trespas faites en meisme le

countee selonc les leys & custumes avantdites"—i. e., "to hear and determine at the suit of the King, all manner of Felonies and Trespasses done in the same County according to the Laws and Customs aforesaid." Blackstone in his *Commentaries on the Laws of England,* Book 4, p. 268 (of the original edition, Oxford, The Clarendon Press, 1770, which I use by preference as having been published about the time now under consideration) truly says: "they seldom, if ever, try any greater offence than small felonies within the Benefit of Clergy: their Commission providing that if any case of difficulty arises they shall not proceed to judgment but in the presence of one of the Judges of the Courts of King's Bench or Common Pleas or one of the Judges of Assize. Therefore Murders and other capital felonies are usually remitted for a more solemn trial to the Assizes."

24. A favorite maxim of the times when the income of the Judges depended somewhat on the number of cases coming before them, was "Boni judicis est ampliare jurisdictionem", i. e., "it is the part of a good Judge to extend his jurisdiction:" Lord Mansfield thought that the last word should be "justitiam", justice: R. v. Phillipps, 1 *Burrows' Reports* at p. 304: all are now agreed on the wisdom of Bacon's advice when swearing in Mr. Justice Hutton as Judge of the Court of Common Bench, that he should take care to contain the jurisdiction of his Court within the ancient mere-stones without removing the mark. A Judge can neither extend nor limit (by declining to exercise it) any jurisdiction he has by Statute or custom. R. v. Williams, 13 *State Trials* at p. 1430: Dart v. Dart, 32 *Law Journal* (*Probate Matrimonial and Admiralty Cases*), p. 125: Furber v. Sturmey, 3 *Hurlstone & Norman's Reports* at p. 531.

Dejean came of stock likely to exercise power arbitrarily; in his Marriage Contract, July 25, 1778, when he married, *en secondes noces,* Demoiselle Theotiste St. Cosme, the minor daughter of Judge Pierre St. Cosme of Detroit, he describes himself as "a Native of the City of Toulouse, parish of St. Etienne, son of the late noble Philippe De Jean, Councillor and Magistrate,

President of the Senechaussée de Toulouse and of Dame Jeanne Boquis de Carcaire". *Can. Arch.*, M. 84, p. 912.

25. 3 *Mich. Hist. Colls.*, p. 17. In a note it is stated: "The man was hung but the wench was permitted to go free upon condition that she act as executioner which she did".

If this be so, Hamilton assumed to exercise the power of the Crown in pardoning. See also 1 *Mich. Hist. Colls.*, p. 416, where certain interesting particulars are given of the slave Ann Wyley.

26. *Can. Arch.*, B. 42, p. 36; 10 *Mich. Hist. Colls.*, pp. 293, 294.

27. Despatch from Sir Frederic Haldimand to Lord George Germain from Quebec, October 25, 1778: *Can. Arch*, Q. 15, p. 336. *Haldimand Papers*, B. 42, p. 32; 10 *Mich. Hist Colls.*, p. 304. Haldimand stated the difficult position of Hamilton "surrounded by numerous tribes of Indians, doubtful, and perhaps with too much reason, of the disposition of the inhabitants of the settlement, it might be necessary for him to assume an authority and exert Powers not so proper for more settled or peaceable times: The security of that settlement was undoubtedly to be the first object of his attention."

There can be no doubt that as military commander he had the right and the duty to exercise these and even more arbitrary powers if necessary for the security of the settlement: but no such reason was ever given for these illegal proceedings.

28. Dejean we shall meet again when we come to speak of the Prerogative Courts, post, Chapter VIII.

29. *Can. Arch.*, Q. 16, 1, p. 32; *Haldimand Papers*, B. 50, p. 22: B 43, p. 63; 10 *Mich. Hist. Colls.*, p. 336.

30. Mr. C. M. Burton in his *Early Detroit: A Sketch of Some of the Interesting Affairs of the Olden Times*, Detroit, 1909, gives the following account, pp. 25-27:

"There was some attempt to conform to legal methods in the punishment of crimes during the early administration of governor Hamilton. There were two justices of the peace appointed in Detroit, Philippe Dejean and Gabriel Legrand. The exact pow-

ers of the justice were not laid down in any work on criminal procedure at that time, but Dejean did not propose to underestimate his authority. In 1777, a storehouse belonging to Abbott and Finchley was plundered and set fire to, and a Frenchman named Jean Coutencinau and a negress named Ann Wiley, or Nancy Wiley, were arrested and brought before Dejean for trial. They were accorded a jury trial and were acquitted on the charge of arson but convicted of robbery. It is very probable that the justice exceeded his powers even in trying the parties for the offenses charged, but he was not contented with trying them, and after the conviction, they were both sentenced to be hung. The high handed methods adopted by the justice surprised the people, and he could get no one to act as hangman until Hamilton promised the woman he would pardon her if she would act as executioner on the man. The result was that Coutencinau was hanged, and the woman was liberated.

"In this matter, the justice had the support of Governor Henry Hamilton, but this act and the hanging of a man named Ellers, in 1775, so aroused the citizens, that they complained to the authorities in Montreal. A grand jury was called there and both Hamilton and Dejean were indicted for murder and a warrant was issued for their arrest.

"It seems strange and unaccountable sometimes, to have affairs of great moment and importance turn upon apparently insignificant events. Hamilton was so frightened at the knowledge that a warrant for his arrest was issued, that he gathered together all the troops he could at Detroit—stripped the country of all the provisions he could carry, and started for Vincennes, Indiana. Just before he reached that place, General George Rogers Clark had passed through Vincennes on his way to Kaskaskia. Clark had left the post in charge of Captain Helm, and one soldier. When Hamilton reached Vincennes, he demanded the surrender from Helm and after some negotiations, the place was given up to him. Clark heard of Hamilton's visit, and returned at once and captured Hamilton and his entire army, and the next day he took Dejean a prisoner also."

Notes: Chapter IV

1. The Patent reads:

"George the Third by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c.

"To Our trusty and well beloved Duperon Baby, Alexander McKee, and William Robertson, and to all to whom these presents shall come or may concern, Greeting. Know Ye that we have taken into our Royal consideration the Loyalty, Integrity and Ability of you the said Duperon Baby, Alexander McKee, and William Robertson and of Our special Grace certain knowledge and meer motion Have assigned constituted and appointed and by these presents do assign constitute and appoint you the said Duperon Baby Our First Justice, and you the said Alexander McKee Our Second Justice and you the said William Robertson Our Third Justice of Our Court of Common Pleas of and in Our District of Hesse in Our Province of Quebec, Giving and by these presents granting unto you the authorities and powers in the said District to the offices and Places of the Justice and Justices of the Common Pleas of any District of our said Province belonging and to proceed in the Exercise thereof at such times places and terms and in such course and manner as hath been heretofore directed for the Districts of Quebec and Montreal or either of them, and as may be found necessary or most conducive to the Ease and Convenience of the Inhabitants of the said District of Hesse and according to the laws of our said Province To have, hold exercise and enjoy the said several offices of Justices of our said Court of Common Pleas to you respectively for and during Our pleasure and your residence, within Our said District of Hesse respectively Together with all and singular the Rights, profits, privileges and Emoluments which unto the said Offices respectively belong and appertain or of Right ought to belong and appertain. In Testimony whereof we have caused these Our Letters to be made Patent, &c. Witness our trusty and well beloved Guy, Lord Dorchester," &c. &c. &c.

2. In the *Report on Canadian Archives for 1890:* Ottawa, the Queen's Printer, 1891, at p. 223, an Ordinance of July 24, 1788, is indexed as an Ordinance "establishing Courts of Judicature in the new districts." *Can. Arch.*, Q 39, pp. 128-133: but this is an error: the Ordinance simply provides for the "moderate and reasonable fees for their services" to be taken by the Judges of the New Districts.

The fees cannot be said to have been excessive.

In a "small cause", i. e., under £10 Sterling, "for the whole labour therein", 6/—

In a cause £10 or over

	s.	d.
For a Fiat for Process.....	5	0
Affidavit to ground Process.....	2	6
Examination of Witness out of Court..	10	0
Recognizance of Bail	5	0
Taxing or Certifying Costs.....	8	0
Return to Writ of Appeal (each Judge)	4	0
On first return of Process (divided equally among Judges present).....	9	0
If over £30 and under £100.....	18	0
If over £100.....	30	0
On final judgment.....	10	0
If over £30 and under £100.....	20	0
If over £100	30	0

3. From internal evidence I should judge this Memorial to be the handiwork of William Robertson—I do not, indeed, find any contemporary statement to that effect, but the internal evidence is very convincing. It was signed by "Wm McDonald and 33 others" and is dated at "Detroit, 12th Sepr 1788". *Can. Arch.*, Q 41, 1, pp. 91, *sqq.*; 11 *Mich. Hist. Colls.*, pp. 627-630.

4. William Robertson was asked before the Committee of the Executive Council at Quebec (when he went to present and support the Memorial) "What are the names of the Illiterate Commissioners of the Peace alluded to in the Memorial?"; he

answered "Tho' Mr Maisonville and Math. Elliot can mechanically sign their names they can neither read nor write, Capn Caldwell has not had a good education. There's no other objections to people in the Commission, Capn La Motte is not a popular character, Mr. Adhemar is settled at St. Vincents in the American States, I imagine the gentlemen in the former Commission are fully sufficient to do all the business but if more are considered necessary, Mr. Askin, Mr. Leith, Mr. Shepherd and Mr. Sharpe are men of liberal education and highly respected in the Settlement, there's likewise Mr. Park and Mr. Abbot but I am sure none of them would act with those mentioned as exceptionable in the new Commission." *Can. Arch.*, Q 41, 1 pp. 118, *sqq.*: 11 *Mich. Hist. Colls.*, pp. 632, 633.

5. They thought—and with reason—this to be an improvement on the former Board of Arbitration and if approved by His Excellency they thought it "might answer valuable purposes" to them. It was, however, much the same as the Courts of Justices of the Peace under the Ordinance of September 17, 1764, but abolished by the Ordinance of February 23, 1777, as found wholly unsatisfactory.

6. No one can read impartially the records of the dealings of Britain and her officials with these distant nascent Colonies but will recognize the extreme anxiety always felt for their well doing—it may have been only the outcome of intelligent self interest but it was there. The absurd and tyrannical performances a short time before of the King and some of his Ministers in respect of the Colonies to the east and south should not close our eyes to the better, more generous and more intelligent treatment of Canada—and of the Thirteen Colonies themselves in earlier days.

7. The Committee consisted of Hugh Finlay, Deputy Postmaster General (Chairman), John Collins, William Grant, François Baby (brother of Jacques Duperon Baby) and Charles de la Naudiere—it sat at the Bishop's Palace, Quebec, October 24 and 31 and November 14, 1788: the Report being on the last men-

tioned date. *Can. Arch.*, Q 41, 1, pp. 87 *sqq.*: 11 *Mich. Hist. Colls.*, pp. 627-650, 655, 656.

8. *Can. Arch.*, Q. 27, 1, pp. 326, *sqq.*: 11 *Mich. Hist. Colls.*, pp. 478, 479.

9. 29 George III, c. 3: *Can. Arch.*, Q. 62 A., p. 267: *Ordinances, &c.*, pt. 2, pp. 225, 229: *S. & D.*, pp. 963-969. Powell's Commission makes him "First Justice", the Ordinance speaks of "First Judge". For the full story of Powell's appointment, see my *Life of William Dummer Powell*, Michigan Historical Commission, Lansing, 1924, cap. VII and Notes.

10. The Act of 1792 is 32 George III, c. 6, (U. C.): that of 1794, 34 George III, c. 2 (U. C.) commonly called the "King's Bench Act" or the "Judicature Act".

11. Blackstone in his *Commentaries*, Bk. 4, says, at p. 238, "the mercy of juries will often make them strain a point and bring in Larceny to be under the value of twelve pence when it is really of much greater value. . . . . a kind of pious perjury." The old law writers carry the death penalty for Grand Larceny back to the times of Henry I and it certainly was settled in the time of Henry III. The curious may consult Hale's *Pleas of the Crown*, vol. 1, p. 503—one old writer is very positive: "firmissima lege statuit Henricus primus quod fures latrocinio deprehensi suspendantur".

The punishment by transportation did not come into force till (1718) 4 George I, c. 11.

12. See the List: *Can. Arch*, Q. 39, pp. 134, *sqq.*: 11 *Mich. Hist. Colls.*, pp. 621, 622.

13. See my Life of *William Dummer Powell* referred to in note 9 *suprâ*.

Notes: Chapter V.

1. I have described the Records and their discovery in my Address before the Michigan Bar Association on *The First Judge of Detroit and his Court;* and I repeat here the account in part.

The extant Records of this Court consist of two paper-covered folio volumes, and a third folio volume bound in parchment; the last in the vault at Osgoode Hall, Toronto, the first two in the Ontario Archives.

Those in the Archives were discovered by Colonel Alexander Fraser, the Provincial Archivist of Ontario, in a search made by him through the Osgoode Hall vaults; the other, being among the Term Books of the Court of King's Bench, escaped him; in going over these Term Books in 1913, I discovered it.

The Act of 1794, 34 George III, Cap. 2, by sec. 32 provided that all the Records of the various Courts of Common Pleas should be transmitted to and deposited in the Court of King's Bench and make a part of the records of that Court.

The volume found by myself has the original record of the proceedings of the Court of Hesse from its beginning, July 16th, 1789, till September 24th, 1789; then (reversing the volume) from May 19th, 1791, till August 4th, 1791, upon which day the Court adjourned to the 11th of August. Some thirty-six pages have been cut out before the record for May 19th, 1791, which probably contained the proceedings from September, 1789, till May 1791.

The first volume in the Ontario Archives contains the record from August 11th, 1791, till October 20th, 1791; the second from October 27th, 1791, till January 26th, 1792, and then from August 21st, 1792 till March 31st, 1794. The Court was on that day "adjourned till July Term," but on July 9th, 1794, the Court was abolished.

The records are well written and are perfectly legible.

I append Colonel Fraser's account of how he found the treasures now in his custody.

"In the summer of 1910, Mr. C. M. Burton of Detroit, a most public spirited student of the history of the State of Michigan, and especially of the early days of Detroit, called on me in Toronto and expressed the desire to see the vaults at Osgoode Hall, the home of the High Courts of Ontario. Mr. Burton had asked me before this time to enquire at Osgoode Hall for the records of the Court of Common Pleas for the District of Hesse, or the Western District, which at one time included Detroit. The records have been sought for years in likely and unlikely places, including Osgoode Hall, but could not be found. I repeated the search, at his request, but the oldest of the officials, the custodian of the oldest vault for fifty-one years, knew nothing of them and stated that two systematic searches at the request of the Attorney General's Office had been made without avail.

"We were courteously received by Mr. M. B. Jackson, who repeated to Mr. Burton the result of the searches by himself and others. Mr. Burton's immediate object at the time, however, was to observe the method in use for filing the papers preserved in the vault and the several books used. We proceeded to the Old vault containing chiefly the files of judgments in Q. B. cases. At that time there was no electric light in the vaults and the use of a lamp was forbidden because of the possibility of accidental explosion. The languid flame of a tallow candle sufficed to show the way, though not to shed sufficient light on the dust-begrimed pigeon-holes. Mr. Burton noticed a book of ancient appearance on the top shelf that aroused his curiosity. To get it for him, I climbed on an uncovered deal box filled with old papers that lay on the floor, and reached the book. It proved to be a book into which letters of the eighties had been copied by letter press—of no apparent record value. I replaced the book, and in stepping down from the box upset it, and the contents emptied on the floor. Mr. Jackson asked me not to trouble to replace the loose material that had fallen out of the box, which could be attended to by the caretaker. I however thought it best to leave everything in the condition in which we had found it,

and proceeding to pick up the contents of the box, the first article I got was a thin paper covered book similar to the old-fashioned books sometimes used by the township valuators of long ago. Indeed, I thought it was such a book and I proceeded to examine it. My astonishment may be imagined when I discovered that the book was one of the long lost Minute Books of the Common Pleas of the Western District, and there on the first page was the name of the "First Judge," the Honourable Wm. Dummer Powell. Mr. Burton and Mr. Jackson were standing near me in the narrow vault, the latter holding the candle and telling the Detroit visitor of the age and glory of Osgoode Hall. I suppressed my rising feelings until all the papers had been put back in the box except eight thin folios, one after another of which I had rescued from the orderless heap, tattered and apparently useless, but in reality of priceless value, being the original records of our oldest constituted Courts for the old Districts of Hesse, Mecklenburg and Luneburg in Upper Canada.

"I asked Mr. Burton to look at one of the books, remarking that he might feel interested in it. He opened it, and when he saw the holograph of John Munro, a relative, on one of the pages he gave up the effort to appear calm, and in the circumstances was to be excused for having always known that the precious records were there."

2. For an account of Roe see my *Address* mentioned in note (1) *ante*, pp. 31, 32: my *Legal Profession in Upper Canada in Early Years*, Law Society of Upper Canada, Toronto, 1916, pp. 168-170, also contains some account of him.

3. As to these men see my *Address*, pp. 32, 34.

4. 25 George III, c. 2: *Ordinances, &c.*, pt. 2, pp. 149-160: *S. & D.*, pp. 780-793.

5. A provision was made that if the defendant lived above the Long Sault of the Ottawa, above Oswegatchie (Ogdensburgh) or below Cape Cat or the Seven Islands on the St. Lawrence, when the defendant should not be personally served, execution should not issue until the plaintiff gave security to refund in case the

defendant within a year and a day could get the judgment reversed.

6. An Address of the principal Inhabitants of Canada to the King relative to the Establishment of Courts of Justice, January, 7, 1765, *S. & D.*, pp. 223 *sqq.*: *Can. Arch.*, B 8, pp. 14, *sqq.*

Depuis quatre ans nous jouissons de la plus grande Tranquilité; Quel bouleversement vient donc nous l'enlever? de la part de quatre ou Cinq Persones de Loy, dont nous respectons le Caractère, mais qui n'entendent point notre Langue et qui voudroient qu'aussitôt qu'elles ont parlé nous puissions comprendre des Constitutions qu'elles ne nous ont point encore expliquées et aux quelles nous serons toujours prêts de nous soumettre, lorsqu'elles nous seront connües; mais comment les Connoitre, si elles ne nous sont rendües en notre Langue?

De là nous avons vu avec peine nos Compatriotes emprisonnés sans être entendus, et ce, à des fraix considérables, ruineux tant pour le debiteur qué pour le Créancier; nous avons vu toutes les Affaires de Famille, qui se décidoient cy-devant a peu de frais, arrêtés par des Personnes qui veulent se les attribuer et qui ne savent ny notre Langue ni nos Coutumes et à qui on ne peut parler qu'avec des Guinées à la Main.

The contemporary translation in English is sufficiently accurate:

"For four years we have enjoyed the greatest tranquility. By what sudden stroke has it been taken away through the action of four or five jurists, whose character we respect, but who do not understand our language, and who expect us as soon as they have spoken, to comprehend legal constructions which they have not yet explained, but to which we should be always ready to submit, as soon as we become acquainted with them, but how can we know them, if they are not delivered to us in our own tongue?

"It follows, that we have seen with grief our fellow citizens imprisoned without being heard, and this at considerable expense ruinous alike to debtor and creditor; we have seen all the family affairs, which before we settled at slight expense, obstructed by individuals wishing to make them profitable to themselves, who

know neither our language nor our customs and to whom it is only possible to speak, with guineas in one's hand."

7. *S. & D.*, pp. 327, *sqq.*: *Can. Arch.*, Q. 52, 2. I cannot find that the Report was ever in fact presented. All that seems to be extant is: "A Draught of An Intended Report of the Honourable the Governor in Chief and the Council of the Province of Quebec to the King's most Excellent Majesty in his Privy Council; concerning The State of the Laws and the Administration of Justice in that Province."

The language in the Text will be found *S. & D.*, p. 347:

Arrest of the body are used in the first instance both upon suits in the court of King's Bench and suits in the court of Common Pleas, and even upon suits instituted before justices of the peace. This is a part of the English law that a good deal surprised and alarmed the Canadians upon its first introduction, as it carried an appearance of much greater severity than was practised under their own laws, which allowed of imprisonment only in criminal proceedings and in some few civil suits grounded on bills of exchange, or other instruments of a commercial nature, and then only in execution of a judgment of the court, and not in the beginning of the suit; but now they are grown accustomed to the way of proceeding, and frequently put it in practice against each other: and many persons of good sense and character of both nations, are of opinion that considering the great credit that has been given by persons in trade in this province, and the knavish and trickish disposition that has appeared in many of those to whom it has been given there is no other method of proceeding by which the creditors can hope to obtain payment of their debts. This is more especially the opinion of your Majesty's British subjects that are concerned in trade in this province, many of whom objected some time since to the execution of even a part of the English law itself, to wit, that part of it which relates to commission of bankruptcy, upon a supposition of its being too indulgent to debtors to be useful to this province; yet other persons are of a different opinion, and think arrests of

the body in the first instance an unnecessary piece of harshness in civil suits and wish that it were restrained.

8. *S. & D.*, p. 401 : *Ordinances, &c.*, pt. 2, p. 26.

9. *S. & D.*, pp. 424, *sqq*, esp. p. 432; Christie's *History of Canada*, Vol. 1, pp. 27, *sqq*.

10. *S. & D.*, pp. 445, *sqq.*, esp. 453.

11. The Ordinance of April 21, 1785: 25 George III. c. 2, s. 4, gave one or more Judges (instead of the Judges or any two of them) the power in cases over £10, sterling, on "affidavit of the plaintiff or his book-keeper or clerk or legal attorney (instead of the "affidavit of the plaintiff or otherwise") that the defendant is indebted to the plaintiff in a sum exceeding £10, sterling" if "satisfied by the oath of the plaintiff or some other person that the defendant is immediately about to leave the province and whereby the plaintiff might be deprived of his remedy against such defendant", to grant a Capias to hold him to bail or in prison till two days after the execution might be obtained by the plaintiff if he succeeded.

12. It was not till 1893 that we in Ontario who believe our Practice to be far advanced along the lines of reason, convenience and common sense, made the rule avoiding the necessity of a unanimous verdict in civil cases and taking the verdict of ten jurors. The Judicature Act, 1895, 58 Vict. c. 12, s. 112 (3) (Ont.). We still require a unanimous verdict in criminal cases.

13. In Luneburg and Mecklenburg (and it is to be presumed also in Nassau) Jury trials were very common.

14. So far as extant records show there was only one appeal to the Court of Appeals from any of the four Courts of Common Pleas in the Upper Country.

In one case in the Court of the District of Luneburg, we find the following. January 22, 1789, in the case of Conradt Peters and Jonathan Wickwire, "The Court are of opinion that from the peculiar situation of the parties in this cause, and to prevent the establishing a precedent in causes of this nature that judgment should be suspended and do therefore suspend their judg-

ment till the opinion of the Chief Justice can be known." The Court disposed of the case, March 30, 1789. This was not properly speaking an appeal, but in Justus Sherwood v. Samuel Adams, April 12, 1794, we find an entry: "Personally appeared the defendant, Samuel Adams, and filed motion for an appeal of this suit. The Court take time till Monday next to consider of the same." And on April 14, 1794:

"The plaintiff appeared.

"The defendant appeared.

"The Court in answer to the defendant's notice of appeal given to this Court, have at present no objection to the bail tendered by him, and are ready upon his giving the requisite security according to law, and upon producing a writ of appeal, directed to the judges of this court, from any court in this Province, authorized to give such writ, to allow the same and comply therewith."

The appeal does not seem to have gone any further. But in the Mecklenburg or Midland District, there was an actual Appeal pushed to a successful issue.

On Monday, January 11, 1790, Peter Schultz sued William Carsons for his land and goods which he claimed Carsons had procured from him by giving him liquor, etc. The defendant denied this and after hearing witnesses, the Court gave judgment on Friday, January 15, for the defendant dismissing the action, the plaintiff to "pay the costs taxed as eight pounds, twelve shillings and one penny" (say $34.40). Schultz appealed and succeeded. We find the following entry, Saturday, March 17, 1792:

"Peter Schultz vs William Carsons { The plaintiff appears in person and produced and filed an authenticated copy of a judgment of the Court of Appeals whereby the judgment in this cause given by this Court has been reversed, and prays by a petition filed that a Rule of this Honourable Court may be made for the said William Carsons to appear before them on Saturday, the twenty-fourth instant, to shew cause, if any he hath, why this cause should not stand revived and be forthwith proceeded upon.

"It is ordered accordingly that the said William Carsons do appear in this court on Saturday, the twenty-fourth inst., as prayed."

On Saturday, March 24, the defendant appeared and said he had conformed to the judgment of the Court of Appeals and delivered up to the plaintiff the whole of his property. The plaintiff said he had received only part and that in part in a damaged condition. The Court heard the evidence and on Wednesday, March 28, delivered judgment ordering "that the plaintiff shall recover of the defendant the sum of forty pounds, currency of the Province, as a compensation for the deficiency of sundry articles not delivered to him by the defendant, together with costs of suit.

"And as the Court of Appeal have ordered that the judgment of this Court shall be reversed without costs to either party, the Court cannot take notice of any charge made by the plaintiff on that account." 14 *Ontario Archives Report*, (1917), pp. 438, 443, 208, 209, 276, 281, 282.

Notes: Chapter VI

1. Walter Roe was regularly called to the Bar and was at this time the only regularly trained and called lawyer in the District.

2. In actions over £10 sterling as were all those called on this, the first day of the Court sitting, on default made by defendants the plaintiff, appearing in person or by attorney, the case was not proceeded with but a Default was noted against the defendant.

The cause of action in this case was the grazing by Isaac Germain, Sergeant in the 65th Foot, of Cattle on Hog Island (now Belle Isle) in 1788, McDougall claiming to be owner of the Island. The subsequent proceedings in the action were as follows:—

"1789, July 23, Second Default of defendant

August 20 Evidence taken in the absence of defendant and case taken under consideration en delibéré, for eight days, (i. e., a week, the first and last days being both counted at the Common Law.)

August 27 Judgment for plaintiff for

Debt	£30	9	6
Costs	9	9	5
	£39	18	11

September 19 Execution issued for

Debt	£30	9	6
Costs	9	9	5
Writ	0	5	0
	£40	3	11

October 2 Alias Fi.Fa. (the judgment not being realized by Sheriff, a new writ of Execution on Fi.Fa. was issued for

Debt	£40	3	11
Subsequent Costs	1	15	0
	£41	18	11

3. No doubt the defendant was absent from Detroit: the Records for October, 1789, being lost, we cannot know what this suit was about or how it terminated. The plaintiff as will appear from the next suit was the agent of the Miamis Company.

4. A minor cannot bind himself by a Promissory Note. The defendant was properly called upon to prove his defence: the Note being admitted to be signed by him made out a *primâ facie* case. He appeared, August 20, and producing his *Baptistaire*, the record of his Baptism, from which it appeared that he was not a minor when he signed the Note.

It was, indeed, proved that the debt for which the Note was given was his father's but the Court held that "he had by consenting to sign the said Note become under an obligation of dis-

charging the said debt", and judgment was entered against him for

Debt	£15	19	4½
Costs	6	6	2
	£22	5	6½

Fi. Fa. issued, September 14, 1789, returnable, January 7, 1790. At the original French Canadian Law majority occurred at 25 but this was changed to 21 to agree with the English rule by the ordinance of November 6, 1764: *Ordinances*, &c., pt. 1, pp. 53, 54.

While Thomas Smith, the Clerk of the Court, was said to be familiar with both French and English, it is plain that his knowledge of French was colloquial only. His orthography and syntax are alike defective; in the former he followed the current pronunciation without regard to literary accuracy. We have Batistere for Baptistaire, proof of baptism, and quite a different word from Baptistere, baptistry. We have him writing *se* or *sai* for *sait; sucure* for *sucre; ètta, etter* or *étté* for *étais* or *était; charger* for *chargé; batteaux* for *batteau; Evangille* for *Evangile; dite* for *dit; dise* for *dit; payer* for *payé; laisser* for *laissé* or *laissée; deposer* for *deposé; semmex* for *sémé; meniot* for *minot; bled* for *blé; fremment* for *froment; voine* for *avoine; poids* for *pois; croix* for *croit; motie* or *mottier* for *moitié; sciene* for *sienne; Garais* for *garé; appre* for *aprés; mai* for *mais; ettiot* for *etoit* (était), *otre* for *autres; lui* for *il; ettat* for *etât; seizer* for *saisie; actualment* for *actuellement; ce est* for *c'est; vinght* for *vingt; Janvieve* for *Genevieve; éte* for *été; plusier* for *pleusieur; l'Englais* for *l'Anglais; prie* for *pris; rest* for *reste; cler* for *clef; grinier* for *grenier, nege* for *niege; expliquer* for *expliqué; juumant* or *jimmat* for *jument;* the termination "er" is constantly used for "é" or "ée", the singular often for the plural and *vice versâ;* the feminine for the masculine and *vice versâ,* etc., etc.

Thomas Smith disappears after August 4, 1791, having resigned to look after his business as Notary Public and is succeeded August 11 by Charles Smyth; he is a little better, but we

have *decissoire* for *decisoire; la Trenche* for *la Tranche; matteriaux* for *materiaux; overage* or *ovrage* for *ouvrage; faite* for *féte; grinier* for *grenier; na* for *né; dan* for *dans; bled* for *blé; ocuper for occupé,* (and many similar mistakes of "er" for "é" or "ée") *hor* for *hors; Juliet* for *juillet; quellque un* for *quelqu'un; cet* for *cette; previlege* for *privilège; assa* for *aussi; desindre* for *descendre,* &c.

William Monforton who was acting Clerk for a time from and after August 1, 1792, being French, made few mistakes in French but many in English.

5. The defendant's contention was yielded to by the plaintiff that he never agreed to pay interest and judgment was entered simply for the principal. In modern law in almost every civilized country, interest is allowed on a debt as of course; but it was not so at the Common Law. This suit gave rise to several complications which will be noticed in their proper place—See Note 7, *post.*

6. This is an instance of the verbal plea being entered on the Records by the Clerk as required by the Ordinance.

The subsequent proceedings were

"1789 August 20, a Default by defendant
27, a second Default by defendant but the plaintiff did not sufficiently prove his case.
September 10, Evidence taken and judgment for

Debt	£179	12	3
Costs	11	4	6
	£190	16	9"

September 25, Fi.Fa., issued, returnable, January 7, 1790.

7. On August 20, the plaintiffs failed to prove the agreement to pay interest and had judgment for the principal £49 6 5 and costs £8 12 6. See Note 5, *ante.*

8. The first instance of a counterclaim. So far we have had only "Currency of the Province" but now "Livres of the ancient Currency of Quebec" appear.

It may be well to state the various Currencies employed:

(1) Sterling, the English Currency in which the £ was considered worth $4.44 4/9 the "old Par of Exchange" but when the Currencies came later to be adjusted found to be 9½% more valuable, $4.8667 the "New Par of Exchange."

(2) Quebec, Provincial, or Halifax Currency, considered worth 9/10 of Sterling, the £ of this Currency being considered worth $4.00. This Currency was established by the first Ordinance made after the Conquest, September 14, 1764, making 20 British Coppers (Halfpence) equal 1 shilling, the Mexican Dollar, 6 shillings, the Livre 1 shilling: *Ordinances, etc.*, pt. 1, pp. 45, 46. It may be interesting to note that 48 Sols Marqués were worth 1 shilling. They were the "sou markee" in later years considered on a par with the "Continental" money. An Ordinance of May 15, 1765: *Ordinances, etc.*, pp. 69, 75, makes 18 British Coppers or 36 British Farthings worth 1 shilling Provincial Currency when it was replaced by the dollar.

(3) New York or York Currency worth 5/8 of Provincial Currency, the £ being worth $2.50. The York shilling or Yorker was in my boyhood a common unit of value, 2 to a quarter and 8 to a dollar; the coin used for it was the English sixpence. By the Ordinance of September 14, 1704, 30 Sols Marques were made worth 1 shilling, York Currency, i. e. 5/8 of the number of Sols Marques, 48, worth 1 shilling, Provincial Currency.

(4) Old Provincial Currency of Livres, Sols and Deniers. Murray in his Report of the State of the Government of Quebec, June 5, 1762; *S. & D.*, pp. 47, *sqq.*: takes the Livre as worth 10 pence sterling (about 20 cents). This value was established by the Ordinance of September 14, 1764, already mentioned whereby the Livre became equal to 1 shilling Currency. The modern Franc substantially represents the ancient Livre.

In the old French Currency 1 Livre equaled 20 Sols (Sous) equalled 240 Deniers, 12 Deniers making 1 sol and 20 sols making 1 Livre. Consequently the amount of the Counterclaim was 180s or £9 Currency.

9. It is to be observed that Walter Roe being an Attorney at Law regularly admitted did not require a formal Power of

Attorney or Procuration; but this was required from Charles Smyth a layman who had no such qualifications.

10. The first case under £10 sterling.

11. Schieffelin claimed that he had hired his servant, Charles Bellard, to Fontenoy till the end of June; that Bellard worked for Fontenoy for the time agreed upon and the master claimed £24 4 6 for such service.

The defendant made default again, August 27 and September 3. On the latter day, Roe produced two witnesses, John Askin, Jr., who simply proved a document evidencing Bellard's employment, and Charles Gouin, a merchant of Detroit, who (in French) "after being sworn upon the Holy Evangelists declared that he had no interest in the result of the action and that he knew that the said Charles Bellard engaged by the plaintiff had been employed last winter in the service of the defendant, that he had been present at a dispute between plaintiff and defendant from which he understood that the man had been engaged until the end of June and that as he had left the service of Fontenoy on June 14, he (Fontenoy) refused to account to Mr. Schieffelin for the wages, he (Fontenoy) said that this was forfeited by his desertion—that the witness had heard it said that Mr. Schieffelin should have £20 for the services of his servant till the end of June, that the said Mr. Gouin had no knowledge of the said £20 having been paid and that the servant Bellard had left the service of the defendant about the 5th of June last. ("Engagé" was the term generally applied to those employed by the traders in fur, etc., with the Indians). The plaintiff had judgment for £24 4 6, interest from July 20, 1789, and costs. The costs do not seem ever to have been taxed or judgment entered—perhaps because on September 3, John Askin, another Detroit merchant, recovered a judgment on a Promissory Note against Fontenoy for

Debt	£919	13	9
and Costs	9	7	6
In all	£929	3	3

12. John Visgar was a trader in "Saguinau" with whom Jonathan Schieffelin, a very prominent merchant of Detroit, by reason of his boat being overloaded, left some sugar, apparently on the arrangement that Visgar could have what he wanted for his own use at cost price with freight to Saginau added: Visgar seems to have been claiming to hold the sugar; and Schiefflein had it taken under an attachment, a proceeding then and now unknown to the English law.

On the defendant making default in appearing, August 27, a continuance was had for eight days (i. e., a week). Default again; September 3, evidence was taken of Charles Gouin, merchant of Detroit, who deposed "that he knew that Mr. Schieffelin had left sugar with Mr. Visgar but on what conditions he knew not." Also of Robert Gourneau: "I know that in the month of May or beginning of June last, Mr. Schieffelin left at Mr. Visgar's ten quarters and two barrels of sugar which he left only because his batteau was too heavily laden and that the quarters were more than 30 gallons each." (An English quarter was and is 8 bushels or 64 gallons). A third witness knew nothing about the matter. At the Court, September 10, the defendant put in his defence. Next Court, the judge promised judgment next Court day; but we have not the Record of the result.

13. Capias ad Satisfaciendum—familiarly called Ca. Sa., a Writ directing the Sheriff to take the debtor into and keep him in close custody until he paid the judgment.

The Ordinance of April 21, 1785, authorized a Ca. Sa. in two cases only: (1) if the defendant conveyed away or secreted his chattels or opposed their seizure and (2) in commercial matters. This seems to be of the latter class.

River à la Tranche now the River Thames in Ontario; Pike was a Yeoman, i. e., a farmer settled on that river.

14. Cox having obtained judgment against Guillaume (William) Gyeaux and issued execution, the Sheriff could not find sufficient goods to satisfy the Writ. Roe had Joseph Pilot in whose hands he suspected some of Gyeaux's goods to be secreted,

summoned to state the fact on oath. This was a proceeding unknown to the English law. We have a similar practice in Ontario for the examination under oath (not, however, in Court) of anyone supposed to be in possession of any property of the judgment debtor exigible under execution. R. 583.

This was not the end of Roe's attempts to get his money for the client—he had certain grain and cattle seized on Gyeaux's farm on the left side of the River. Nicholas Gyeaux, the nephew of the defendant claimed half the grain 12 bushels (minots) of wheat (blé froment), 12 bushels of oats (avoine) and one bushel of peas (pois) seized on one piece of land. Charles Prout claimed all the Indian corn and wheat (about 5 bushels) seized on another piece; and Louis Gyeaux, brother of Nicholas, claimed a small red cow. At that time in English law the Sheriff was in a quandary; he might sell the articles claimed at the peril of an action by the claimant or abandon the seizure at the peril of an action by the plaintiff. In the French Canadian law the Sheriff had an easy course. He called the Claimant into Court to prove his claim, much as in our modern Interpleader.

The Claimant appeared, September 3, Nicholas produced two witnesses, Jean Baptiste Beaubien and André Peltier; Beaubien swore "That Guillaume Gyeaux told him several times two months ago that this nephew Nicholas Gyeaux the claimant had sowed in partnership with him 12 minots of wheat, 12 minots of oats and 1 minot of peas, and that he conscientiously believed this to be true."

Peltier swore that "last autumn, Nicholas Gyeaux, the claimant, had proposed to sow his uncle's land on shares and to leave his share in his yard. That he knows that Nicholas Gyeaux has had it kept at his uncle's and that he conscientiously believes that the uncle and nephew were on shares."

The Court upheld Nicholas' claim. Charles Prout produced Beaubien and Nicholas Gyeaux as witnesses. Beaubien swore "that Guillaume Gyeaux and Charles Prout had told him that the latter was to sow on the land of the former a piece of wheat and a piece of oats for his own benefit." To Mr. Roe he swore

"that he had heard the harvest at Gyeaux's claimed by Prout the day after the beginning of the suit." Prout succeeded in his claim.

Louis Gyeaux produced his brother Nicholas: Roe objected to him as interested and his evidence was taken "subject to objection." He swore "that after the institution of the action but before judgment rendered, his uncle, Guillaume Gyeaux, had told him that one of the cows was the property of Louis Gyeaux, the claimant, that he delivered the cow to his brother and left it in his yard with the other cattle of the defendant and that that cow was one of those taken in execution." Whether from the inadmissibility of this evidence or because the judge disbelieved it, Louis failed. Another claimant Alexis Maisonville also failed. We have no details of his claim.

15. We have the expressions, "perfect payment" "ample payment," "actual payment." "Altercation" in the next case but one does not imply violence or bad language.

16. Williams had or claimed to have a large tract of land on the left side of the River; he procured a document signed by Charron which proported to be an agreement to purchase a lot in the Second Concession from the River, and sued for the purchase price. The defendant said that he signed the document under a mistake induced by the fraud of the plaintiff. A good defence even at the Common Law under a plea of *Non fecit*. On September 24, it was agreed to take the evidence on the following Thursday, October 1: as the Records of the Court for that day and for more than six months thereafter are lost, we do not know how the action ended.

17. Another proceeding then and now unknown to the English law—an order for the delivery of possession of land, *pendente lite*. The parties appeared in Court August 27, when an enlargement was had for a week: September 3, the defendant did not appear and the plaintiff had final judgment of reentry and for costs, £9 17 0.

18. A case of conditional judgment unknown to the English law.

19. An action by wife against her husband impossible under the English law.

In an action by William Robertson, the well known merchant of Detroit, against Dequindre, he recovered judgment on July 23, 1789, for £14 6 10½ and £6 1 11, costs, in all, £20 8 9½. Execution having been issued, the Sheriff seized and sold certain chattels as belonging to the husband; the wife claims the chattels as hers and sues the husband for their value. September 3, the husband again defaults and on September 17, she produces witnesses Francis Perthuier who in answer to Walter Roe the plaintiff's attorney, deposed as follows:

Q. If the witness knows Antoine Dagnis Dequindre the defendant in this action? A. Yes.

Q. 2. If he knows the state of this matter? A. No.

Q. 3. Have you heard that there was a seizure at his place? A. He has heard that said.

Q. 4. Have you heard it said that these chattels were sold and by whom? A. He has heard it said that they were sold by auction.

Q. 5. Does he know that they were sold by the Sheriff? A. I do not know.

William Monforton deposes in answer to Walter Roe:

Q. 1. Does he know the defendant in this action? A. Yes.

Q. 2. Does he know that there was a seizure at the defendant? A. Yes.

Q. 3. Does he know that these effects were sold by the Sheriff? A. He has heard it said that these effects were sold in the Sheriff's Court.

Q. 4. Does he know the condition of the defendants affairs? A. He does not know it positively but that he is largely indebted and has not much property to satisfy the indebtedness.

The case stood over till another Court and September 24 to another, but the Records are missing.

20. The first action upon a judgment. The defendant's plea is irregular but is read by the Court as a denial of the Record—*Nul tiel record.* The plaintiff fails to prove it and is nonsuited, thus being enabled to sue again if so advised.

21. Thomas Smith, the Clerk of the Court, being a party litigant, is not permitted even to make the entries but Walter Roe after being sworn, acts as Clerk *pro hâc vice.*

22. "Curateur" in the French Canadian law corresponds to Administrator in the English law in most cases. See cap. X *post* on The Prerogative Court. In this case, James Fraser was selected to administer the estate of Samuel Judah who had died intestate.

23. The spectacle of a wife suing without her husband for anything was, except in very special cases, unknown at the Common Law. It was for the husband to enforce her rights. We find that in this instance the husband did enforce her rights by action heard September 10, for the rent of a house. The defendant did not deny the rent but claimed that carpenters sent by the landlord to repair had taken some articles. The landlord denied that he had authorized any entry before the expiry of the tenancy and had judgment for the full amount of the rent. The defendant's right of action against the carpenter was reserved to him.

24. Jalbert sued Schiefflin for £20 16 8, Halifax Currency, claiming to have been engaged by him in the autumn of 1788, to go to Sagineau, an Indian Post, to assist in the trade with the Indians until May 15, 1789, promising to pay £20 16 8 as wages and supply him with wholesome meat, drink and lodgings. Schiefflin not only denied the debt but became "incidental plaintiff" (i. e., counterclaimed) for 231 livres (£11 11 0 Provincial currency, see Note 8, *ante*). This was a proceeding unknown to the Common Law, which required a separate action to be brought.

Schiefflin on September 3, produced two witnesses one of whom, John McGregor, deposed in English that "he does not know anything respecting the matter in question", and the other, Raphael

Bellonger (Belanger), in French "that he was present with Antoine Jalbert when the said Jalbert left the service of the defendant, May 10". The plaintiff made no attempt to prove his case or the defendant his counterclaim and the action was dismissed with costs payable by the plaintiff.

25. What would be called in English law an action in Detinue; but the alternative judgment was unknown in that law.

26. Another judgment impossible in English law which could not compel "the plaintiff to finish his work according to agreement."

27. See Note (25) *supra*.

28. One of several cases which fix the relation value of New York (or York) and Provincial, Quebec or Halifax Currency. See Note 8, *ante*.

29. An amendment could not legally be allowed without payment of costs.

30. Another action impossible at the English law—by wife against her husband. The plaintiff, the wife, claimed that £50, sterling, had been sent her by her friends in Scotland and that her husband kept it from her: September 24, a direction was given that she should adduce her proof, but all subsequent record of the case is lost.

31. See Note 29 *ante*.

32. At law, no Attorney at Law could or can discontinue his Attorneyship without cause or the consent of his client: any other Attorney can at will, without cause or consent.

33. A proceeding unknown to the Common Law.

At the Civil Law either party to a suit could elect to place himself at the mercy of the other and say that he would accept as true what the other will swear to. Thereupon the other must appear and swear to the facts and that statement will determine the result of the action. This is called the "decisive oath" or in French "le serment decisoire". In the present case, the plaintiff here agrees that if the defendant will swear that he does not owe the debt, his action may be dismissed. In this case,

the defendant would not swear and judgment went against him, June 9, 1791, for

Debt	£16	1	5
Costs	6	11	2
	£23	2	7

Pro confesso is a Civil Law and Chancery expression meaning "taken as admitted."

34. The witness Jean Baptiste Morran testified:

"That he is a clerk employed by the plaintiffs and that he was, on their behalf, at the house of the defendant, on Sunday last, to demand his reason for not paying the present demand. For answer, the plaintiff said to the witness that it was certainly true that he owed him the twenty-three pounds for a quarter of rum which he received last summer but he could not make up that sum, although he had asked for it in several houses."

While Graham & McKenzie had no difficulty in obtaining their judgment for £23 16 0, New York Currency, it was not so easy to realize their money. They issued a Fi. Fa. for the debt and costs, £21 5 8; and the Sheriff seized the chattels on the defendant's farm: Jacques Campeau a farmer produced a Chattel Mortgage to him from Louis of some of the chattels and also claimed as his own a cow which had been seized as Louis'. He appeared in Court, June 30, and made his claim: July 7, the claim to the Chattels under the Mortgage was abandoned and the cow given up to Jacques. The money was then made under the Fi. Fa. See the Return made, November 3, 1791.

35. This curious case has unusual features: Meldrum and Park, prominent merchants in Detroit obtained a judgment against Paul Campeau and his wife. Certain lands were seized by the Sheriff for sale under his execution. The lands were claimed by the children of William La Forest and (in form) by La Forest himself—the fact being that the claim was a charge on the land

seized of 2635 livres in favour of the children of La Forest and his wife Genevieve Fovelle dite Bigras.

The Sheriff was ordered to sell subject to the claim but Roe said that the number and ages of these children being unknown, would dampen the sale and asked for delay. It turned out that two of the children were still minors, two being of full age, and a sale was ordered to be made subject to the claim of the two minors, 1317 livres 10 sols. See Record of December 8, 1791.

36. Even a son was not allowed to represent his father without proper Procuration—the same strictness was observed in the Courts of the Districts of Luneburg and Mecklenburg.

37. Apparently an action in ejectment brought against the wrong man—see Records of June 16, June 30, July 7 and August 4, 1791.

38. Patrick McNiff, a surveyor, brought two actions against Charles Chêne and his two sons Gabriel and Toussaint, one for trespass which is this, and the other for debt which follows this in order.

It is impossible fully to understand this case on the Record as it stands; but the evidence in a subsequent action with the parties reversed makes everything clear.

Charles Chêne the father of his two co-defendants owed Samuel Judah, a merchant, on two notes. Samuel Judah dying intestate, James Fraser became Curator of the vacant succession, i. e., Administrator of Judah's estate: he sued Charles Chêne, September 3, 1789, on the two notes—Chêne admitted the indebtedness but claimed a reduction of £2.16, York Currency. Fraser had judgment for

Debt	£310	15	0
Costs	9	6	6
	£320	1	6

Execution was issued, September 25; the Sheriff sold Charles Chêne's land and George McCormick bought it for £120. McCormick had not the necessary money and employed James May

to raise the purchase price by selling rum; but entered into an arrangement with George Lyons, whereby if Lyons raised £60 half the purchase money he should have a joint interest in the farm and have the general management of it in McCormick's absence from Canada. A Power of Attorney for that purpose was lodged with Mr. Roe, to be given Lyons when he raised the £60. Lyons was in fact acting for the Chênes who wanted to continue to live on the farm. Not waiting for the Power of Attorney and not having raised the £60, McCormick being out of the country, Lyons gave the elder Chêne and his sons permission to cultivate the farm which they did, sowing Fall wheat, etc. When McCormick returned to Canada he occupied a room in Chêne's house paying 40/ per month for it: He had been paid only £31.7.6 by Lyons. He knew that the Chênes had sowed the place and expressed his satisfaction, he also knew that Lyons was acting for them and thought that the balance of the £60 would be paid out of the crop. They did not pay and McCormick left the house after some words. Then he leased the land to Thomas McNiff and the Chênes were ejected. McNiff, however, was willing for them to leave their chattels including cattle there without charge and gave permission for them to plow and sow any part of the land except a patch reserved for potatoes and turnips. In this action McNiff sued the Chênes for taking away some boards and injuring his wheat, &c. (This joinder would have been fatal at the Common Law). The sons Gabriel and Toussaint said that the boards had not been sold at the Sheriff's sale—only the father's property was sold and these boards were Toussaint's and not the father's: The father and Gabriel were found sweeping the top of the grain with a long pole to kill the caterpillars and Gabriel took away a basketful of grain for a young calf from the headland of the wheatfield. The case was rightly dismissed, June 30, 17—, on the evidence as to the grain and grass and in the absence of evidence, as to the ownership of the boards.

The relevancy of the French evidence except as to the cattle,

including, I presume the calf, is difficult to understand without the explanation, but it may be translated.

Pierre Barron:

Q. Were you present when the defendant took possession of our house and ejected us? Were you called to testify what took place and to inform the Court?

A: Yes: I was present when the plaintiff ejected the defendant—that the witness was there with his wagon to carry away the effects of the defendant, that Mr. McNiff told them that the goods could remain without charge: and that he offered the key of the granary three times to Mr. Chêne and also so far as the animals were concerned that he could leave them there.

Q: At what time did this happen? A: He could not say exactly but there was still snow.

By the plaintiff:

Q: Does he understand English? A: No.

A: How did he understand what was said? A: The plaintiff had spoken in French what he said as to the effects—as to the animals that was explained by Gabriel Chêne who interpreted it to his father. (See note 51, *post*, for the rest of the story.)

39. The other action dismissed, June 30, 1791, for want of evidence.

40. The first action of slander.

"The defendant appeared in person and admitted that being angry he had rashly and *malapropos* made statements derogatory to the honour of the plaintiff which he admitted were not deserved and therein he submitted himself to the Court." He was ordered to pay the costs (about $2.00) and a Fi. Fa. issued for that sum 9/5 and 5/.

41. James May, a Merchant in Detroit, had in April, 1791, fished a wrought-iron anchor out of the River with the assistance of his servant Francois Golin: it was claimed as Government property and John Williams, Mate of the *Felicity* was sent with a squad of six men to take it—he did so and took it from May's to the Navy Yard. May sued Fleet for some reason not apparent

but it was proved that Fleet had nothing to do with the trespass, and May discontinued, June 30. Then he sued Williams, August 27, 1782, and got a judgment for £20 and costs. The Judge points out that by the law of Quebec, May might require the anchor to be replaced whence it came and gives the defendant the option of doing so within 14 days or pay £20 damages and costs—the defendant chose the latter.

It would have been useless for Williams to plead that he was acting for the King—that is one of the cases in which the maxim *Respondeat Superior,* let the principal be held responsible, does not apply to relieve an actual trespasser from an action for his tort—and in any case it does not apply to the Crown.

42. Another case of slander regretted and apologised for although, June 9, the defendant had pleaded Not Guilty. The husband was made liable for his wife's tort and the witness was allowed a quarter of a dollar for his ferriage over from Detroit and half a dollar witness fee.

43. The First Demurrer—Roe appearing for the defendant admitting the facts alleged claimed that they were not sufficient to justify a judgment for the plaintiff: the Court decided in favor of that view, July 7, and allowed an amendment on payment of costs—the plaintiff amended, August 4, the defendant pleaded August 11, the plaintiff replied August 18, an order was made, August 25, for trial, some witnesses were heard, September 22, more on September 29, October 6, 13, and 20, Judgment was reserved October 20, and again November 3 and December 1—what the result was does not appear, probably the parties settled.

Apparently Durand owning some land made a bargain with Lips to farm it on shares, the landlord supplying the seed wheat —the tenant would not sow the land as it was not fenced and left the premises—apparently there was an arbitration of four arbitrators who could not agree and an umpire was called in who would report to the Court—but it is impossible to determine the facts.

44. Another "decisive oath": August 4, the defendant was granted another week on account of harvest: August 11, the Rule for the decisive oath (see Note 33 *ante*) was quashed and the matter left to arbitration. The matter seems to have been settled—at all events we hear no more of it.

45. June 23, 1791, the Court had met and the Summons in this case was returned, but enlarged, on account of the day being Corpus Christi—on this day, evidence was given—the case was as to the ownership of a mare in the possession of McDonell but claimed by Du Choquet.

DuChoquet called Robert Abbott who swore that about two years before, his father sold DuChoquet a mare and that in May, 1791, McDonell at the Glaize told him that the mare which the elder Abott had exchanged with DuChoquet for an ox, he (McDonell) had taken from the Indians as his. Louis Causley dit Benoit swore "that about two years ago, he was in the service of the plaintiff during which time he looked after the mare which the plaintiff Mr. DuChoquet had bought from Mr. Abbott which he knew well from having lived with Mr. Abbott and having taken care of the same mare. That last Fall, the Indians had taken away the said mare which they had sold to a female Indian in the employ of the plaintiff from which Indian the defendant had taken the mare by force as belonging to him as he declared to the witness that Spring at the beginning of May when he carried him a letter from Mr. DuChoquet about the mare—That at the same time before arriving at the Glaise he had seen the same mare in the possession of an Indian who declared to the witness that he had received it along with a barrel of rum for another horse. That the same evening the defendant with Mr. Ironside came to the witness and asked him why he wanted to take the mare away from the Indian and the witness said he had only stopped him to see if that was his master's (i. e. the plaintiff's) mare and that on defendant asking if he recognized the mare as having been taken away and was willing to swear to it, he said No—but he would produce a man who had taken it away and that he would prove on oath that it was

the same mare he had sold to Mr. Abbott. The witness declared that the mare was worth about £20 and to hire a horse in the Indian country usually cost $3.00 for a three or four days' trip and that the plaintiff had given him $4 for the trip that he made in the Spring to Mr. McDonell's and also board consisting of 15 or 20 lbs. of meal, not counting the horse which the plaintiff furnished for the trip.

August 11, Judgment was given for the plaintiff for £16 York Currency ($40) and £2 ($5) York Currency for expenses of claim, in all £18, York Currency, equivalent to £11.5.0, Quebec Currency, with the option of returning the horse in good condition within 14 days and paying 1/3 (25 cents) a day from date of writ until delivery.

Exemplary or vindictive damages were not awarded, there being no sufficient evidence (as the Court very leniently thought) of *mala mens.*

46. John Askin had a judgment against Etienne (Stephen) Latour dit Bellard: on the Sheriff seizing, D. McKillop claimed the land under a mortgage; he was, May 19, 1791, ordered to go to trial in four weeks; July 7, he is not yet ready and has an adjournment, peremptorily, for a week: he retains Walter Roe who files one document, August 11, but, September 1, the Court decides against him as the mortgage was given after the Judgment. Certain unauthenticated documents were rejected as evidence, not having been passed before a Notary Public.

47. On June 16, 1791, George Lyons obtained a Judgment for £15.8.2 and costs against Benac: a Fi. Fa. issued, July 2; but when James Elam went to seize, Benac assaulted him and drove him off—a Ca. Sa. was accordingly granted to arrest and imprison him until he paid debt and costs.

48. The familiar Fraudulent Conveyance—"Appostella" is apostille, postscript (or marginal note).

49. An Ordinance was passed at Quebec, April 23, 1777, 17 George III, c. 15, authorizing the Justices of the Peace in their Quarter Sessions to "make such rules and orders touching the

police necessary to be maintained and observed in the said respective towns (excepting only where the same may have been already provided for, by Ordinances for that purpose made in the present session) and to impose such fines, not exceeding forty shillings for any one offence committed against such rules or orders, as to them, in their discretion, shall seem requisite and proper; which rules and orders they shall cause to be publicly proclaimed in those respective towns by the bell-man, and wherever the said commissioners may think proper, to be published in the *Quebec Gazette*", (1777) 17 George III, c. 15: *Ordinances, &c.*, pt. 2, p. 93.

The country was filling up: and April 11, 1791, was passed an Ordinance 31, George III, c. 3. *Ordinances, &c.*, pt. 2, pp. *sqq.* This had a Preamble

"Whereas the Province has lately become divided into several New Districts and is increased in the Number of its Inhabitants, and further Provision is necessary for the internal Regulation of its rising Towns and Villages in all the several Districts as well as in the principal Cities or Towns of Quebec and Montreal." It then went on to give the Magistrates in other Districts the same powers as in Quebec and Montreal Towns and Villages of not fewer than thirty inhabited houses, on a petition signed by a majority of the Heads of the Families in these houses, the penalty in no case to exceed £5 ($20). The majority of Heads of Families in the inhabitated houses in Detroit signed a request and the Magistrates passed a regulation forbidding cattle, &c., running on the streets on a penalty of 5 shillings: the regulation was cried at the Church door at the close of Grand Mass—*ite, missa est*—but some citizens disobeyed.

William Harthorn sued eight persons for disobeying the regulation: September 1, 1791, they all appeared and the cases were all enlarged for a week: September 8, Harthorn was ready in three cases, i. e., against William Scott and John Welch and Matthew Dabson, and got judgment against them for 5/— each, without costs. Not being ready as against the other five, William Hands, John Wheaton, Presque Cotté, Francis Gerardin and

Thomas Smith, these cases stood over till next Court. September 22, the Judge thinking it against reason to require a defaulter on a Penal Statute to be held to appear the second time, dismissed the five cases (Perhaps stretching the law a bit and illustrating the old maxim "Hard cases make bad law").

The defence of Scott was two fold (1) his cow was not on a street but on a lane, (2) the regulation was not properly published. Both objections were correctly dealt with as was the question of costs.

50. James May also sued as Informer four persons, September 1, the four cases stood over a week. September 8, May succeeded in three cases and failed in one.

51. See Note 38, *ante*. Now comes the counterstroke—the Chênes sue McNiff for the crop claiming it as theirs and retain Roe. September 1, 1791, the plaintiffs appear but admit the validity of the essoign, i. e., the excuse for non-appearance of McNiff: September 8, the defendant pleads in writing: September 22, the case stands over: and again, the plaintiffs replying, September 29: October 6 and 13, evidence is taken.

Alexis Labadie knows of his own knowledge that the plaintiffs "had sowed the land now occupied by the defendant, that they had put about 25 minots of seed there the last year": also that "Mr. McNiff had harvested it". "He knows that Mr. McNiff wanting to cut the wheat the plaintiffs forbade him, that they intended to harvest the same, that the witness and Jos. Barron were present when that representation was made to Mr. McNiff who made them comprehend that he did not understand them but it being explained by an interpreter he had them told that if they tried to prevent him cutting his wheat he would have to show them the order of the Judge—this he repeated to them in good French". "He in the Spring arrived when they were disputing with McCormick but he did not see them ejected from the house, the goods being sold before he arrived".

Francis Gamelin deposed to the Chênes, the previous September sowing the land, to McNiff harvesting it, that he with Robert

Navarre, Mr. Godefroy and Etienne Nevernois estimated it at 250 minots, at the instance of the Notary Bellecour.

Robert Navarre swore to the same estimate. Then a good deal of evidence is given about the arrangement to sow and Judgment is reserved: November 3, the Judge wants a valuation by experts, two to be named by each side, and a fifth if necessary chosen by them: November 17, McNiff refuses but the plaintiffs have chosen two English speaking Frenchmen; November 24, Roe files the Report; December 11, he asks for Judgment and December 8, the plaintiffs have Judgment for £62.10.0 ($250) with interest and costs; and execution issues.

52. The Chênes are not yet satisfied. They set up that McCormick had bought the land at the Sheriff's sale—it is called "Lease" the land not being held on Fee Simple but En Fief—at their request with the agreement that they should pay half the purchase money and have a half interest in the land; that Lyons was McCormick's agent and they paid him £31.11.6 toward the purchase price but did not get the land.

They sued McCormick for the return of the money—July 7, 1791, McCormick appeared by McNiff and the Chênes by Roe—and issue was joined: August 11 and 18, September 1, 8, 22, and 29 the case stands over, McCormick having got rid of his special attorney McNiff and, October 6, the defendant admits everything but says the Chênes had full possession from August 8, 1790 till January 25, 1791, and £31.11.6 was not too much for that. The Chênes say that they were in under the Sheriff—the Judge reduces their claim by about £12 and gives them Judgment for £19.12.2 and costs £7.4.3.

53. André Peltier (or Pelletier) had a mare break her leg in a bridge in bad repair—Alex Maisonville a *sous voyer* (road inspector) told him not to touch the mare and he would see him paid: he did not and Peltier sued him at the same time suing those actually responsible for the nonrepair. Maisonville acknowledged the facts but judgment was given against the others and he was set free.

Notes: Chapter VII

1. (1791) 31 George III, c. 31 (Imp.)

2. Order in Council dividing the old Province of Quebec into Upper Canada and Lower Canada "At the Court of St. James's the 24th of August, 1791"—Proclamation of General Alured Clarke, (Lieutenant Governor at Quebec in the absence of Lord Dorchester) dated November 18, 1791, bringing the Canada Act into force on December 26, 1791; the new Constitutions came in force and the new Provinces began their separate career December 26, 1791, from and after which date Michigan was *de facto* in Upper Canada until 1796. Doughty & McArthur, *Documents relating to The Constitutional History of Canada, 1791-1798*, Ottawa, The King's Printer, 1914, pp. 3, 55, *sqq.*; 4 *Ontario Archives Report*, (1906) pp. 158, 169, *sqq.* See also Chapter 1, *ante*.

3. Not "Debt" in the technical sense, but *Indebitatus Assumpsit*, debt in the ordinary sense of money owing on a contract, express or implied.

4. (1792), 32 George III, cc. 1, 2, 4, 6 (U. C.)

5. This was always the rule: while no creditor could be compelled to accept a tender of the proper amount, if he refused and brought action, he received no costs.

6. Only a defence if there was fraud, then a plea of *Non assumpit* was admissible. August 31, 1792, however, the defendant admitted liability and judgment was entered against him for £9 7 6 and costs.

7. Livres still continued to crop up. See Note 8, cap. VI *ante*.

8. The Chênes are still after McNiff: we have no clue to the cause of action, but after an adjournment by consent, August 29, 1792, they got judgment against him next day, of £5 4 6 (N. Y. Cy.) and £3 15 6 (Provl. Cy.) respectively.

9. "al. f. fa." is alias Fieri Facias, a second Writ of Execution, the first not having realized the judgment. "Sub. costs" of course, subsequent Costs.

10. Two good instances of the *Serment decisoire* or decisive oath. See Note 33 to Cap. VI, *ante*.

September 4, the defendant did not appear nor on September 5: but on the latter day, Louis Geniez was called as a witness in both suits; he swore "having taken an oath on the Holy Evangelists that he was in John Askin's house with the defendant Jean Baptiste Sanscrainte and Mr. Roe the advocate who showed to the said Sanscrainte two accounts explaining that they were the accounts of Mr. Askin and Shieffelin and Askin which Mr. Roe in presence of the said witness read item by item to the defendant and asked him if he found any mistake, he said that he did not except one mule which he said he had furnished to Mr. Askin. Mr. Roe told him that he would have to cross the river to admit the said accounts before the Court, the defendant refused, giving as the reason: "Why do you wish me to go there when I do not deny what I owe?" Roe proved the accounts produced to be those read to the defendant and the plaintiff had then judgment. The amount £79 . 16-1 York Cy. was equivalent to £49.17.6½ Halifax Cy., i. e., about $199.50.

11. Another Ca. Sa.—cf. Note 13, Cap. VI, *ante*.

12. The "Third Chapter of the twenty-ninth of George the Third" is the Quebec Ordinance of April 30, 1789, the third clause, reading "III. And be it also enacted by the same authority That until the Bench of the Court of Common Pleas for the district of Hesse, shall have three Judges duly appointed to officiate thereon, all the powers and authorities of the whole number shall be vested in such person as shall have a Commission to be the first Judge thereof; any other Law, Act or Ordinance to the contrary notwithstanding." *Ordinances, &c.*, pt. 2, p. 225. The "Eighth Chapter of the thirty-second George the Third" is the Upper Canada statute of 1792, cap. 8, the fourth Section of which changes the name of the District of Nassau to the *Home* District, and the fifth changes the name of the District of Hesse to the *Western* District.

This is the beginning of the Second Part of the Fifth Period:

it will be seen that there is no longer a list "Under Ten Pounds Sterling."

13. The Record of September 10, 1792, is lost; but from this entry, it appears that a Commission Rogatoire or what is called in English jurisprudence, Letters Rogatory, had been issued. This was in form a request to a Foreign Court to direct a witness or witnesses named to appear before Commissioners named and answer Interrogatories set out in the Letters Rogatory. In English law, the only way to get evidence in a foreign country was by filing a Bill in Chancery for Discovery of Evidence, but in French jurisprudence the course was direct; the Court in which the evidence was to be used itself issued the Commission Rogatoire (as we do now in Ontario). Mr. Justice Powell was undoubtedly right in holding that the Commission Rogatoire could not now be used in view of the Statute of Upper Canada of 1792 which introduced the English law.

14. These are the first (and last) Rules of Practice of this Court, *moriturae.*

15. A radical change was effected by the Statute of 1792, 32 George III, c. 2, s. 1 (U.C.) that "every issue . . . of fact . . . shall be tried and determined by the unanimous verdict of twelve jurors . . which Jurors shall be summoned and taken conformably to the Law and custom of England." Before this Statute the Judge determined the amount of damages himself; but that is an "issue of fact"; consequently it must now be determined by a Jury.

The same Statute authorized the jury to find a Special Verdict, i. e., find the facts leaving the Verdict to the Court on the law.

At the Common Law where the defendant puts in no defence, *Nil dicit,* as here, an Interlocutory Judgment is entered for the plaintiff unless to save expense or for some reason, the defendant admitted the whole damages claimed. If he admits the whole damages a Final judgment may be entered. If the judgment be Interlocutory only it reads "that the plaintiff ought to recover his damages, but because the Court knows not what damages the

said plaintiff hath sustained therefore the Sheriff is commanded that by the oaths of twelve honest and lawful men he enquire into the said damages and return such Inquisition when taken into Court". This process is called a Writ of Enquiry, the Sheriff calls a jury and, himself sitting as Judge, the amount of damages is determined and returned to the Court. In this case before Inquisition had, the defendant admitted the whole amount September 23, 1793: and the plaintiff had judgment for the full amount, £159.18.0 and costs. A similar case of default and Writ of Enquiry ordered: but the Sheriff held an Inquisition with a Jury, returning the Inquisition into Court, September 30, 1793, the plaintiff had judgment for the amount found by the jury, £11.16.3 and costs.

A previous case, McDougall v. Chauvin, September 19, 1793, seems to have followed the same course: as we find Final Judgment on Inquisition found, September 30, 1793. So also in McDougall v. Beaulieu.

16. The Capias ad Respondendum makes its appearance not under Upper Canada Legislation but under the Quebec Ordinances allowing such a Process in the case of absconding debtors where the debt exceeds £10: *Ordinances, &c.*, pt. 2, p. 150. In this case, the defendant did not give "Bail below" to the Sheriff; but, being brought into Court in custody, January 8, 1794, he produced two bondsmen, John McGregor and James May, merchants of Detroit: he filed a Plea, January 11, and January 13, case adjourned; March 14, when "The Sheriff represents to the Court that there is no 'Goal' in the District for the reception of civil prisoners": Roe replies, March 18, and a Venire, i. e., "Venire Facias", a writ directing the Sheriff to cause a jury to come, was directed for March 21; case then adjourned till July Term from the absence of a necessary and material witness for the defendant, but July 7, the Court was abolished by the Act (1794) 34 George III, c. 2 (U. C.) and the case would be tried in a Court of Nisi Prius. While beyond question such a Court did sit for the Western District, no Records exist of its proceed-

ings; the case did not come up before the Court of King's Bench and we do not know the result.

17. Another Ca. Re.: "Bail above": Rule to Plead, i. e., order to state his defence in writing; January 4, 1794, apparently the defendant confessed a debt as we find a Writ of Enquiry ordered, January 8; the result is not Recorded.

18. Another Ca. Re. "Ci. Co." means Cepi corpus, "I have take the body": the defendant gave "Bail above", January 4, but was defaulted: default taken off and Plea permitted on payment of costs, January 8: motion to stay till July Term and adjourned by consent till "next Term": March 14, defendant, delivered by his bondsmen to the Sheriff, was ordered to plead next day; pleads *ore tenus*: March 18, Replication and Venire issued for March 21, but on that day the Return of Venire was extended to March 25" on suggestion that the Jury could not be warned, it being impossible to cross the River owing to the Ice": March 25, Jury called and found for the defendant, the first real jury trial in this Court.

19. Denial of breach of Covenant, the Covenant being admitted: Venire ordered January 8 and action abandoned Jany 11.

20. The Clerk of the Court, Charles Smyth, being a party, he is not even permitted to make the entries: but he gets judgment after Writ of Enquiry, March 14, 1794.

21. By the Act of (1792) 32 George III, c. 8, (U. C.) ss. 7, 8 and 13, the Justices of the District were to build a Gaol and Court House "as near to the present Court House as conveniently may be". Lieutenant Colonel England, Commandant at Detroit, reported to Lieutenant Governor Simcoe by letter dated Detroit, July 24th, 1892, "The two prisoners . . . are arrived here which makes our number of Civil prisoners in the temporary jail here eight and permit me to mention that some direction relative to them becomes necessary as they are all in a very wretched state and I would beg to submit to your Excellency if the unfortunate men belonging to the Provincial Marine have not in some degree made atonement for the offences they are charged with by a

miserable uncomfortable confinement in a wretched black hole and prison for full twelve months". *Wolford Manor Papers* (*MSS.*) Vol. 1, 2, p. 151.

22. Askin got judgment against Lamothe, September 3, 1789, for £70 3. 11, Que. Cy. He brought an action on the judgment by way of Scire Facias and had judgment thereon for £73 11 0 and costs—the modern rule is not to allow costs in such an action if undefended.

23. The first trial jury in this Court. See Note 15 *ante*.

24. A mercantile case in which a Ca. Sa. could issue: it was granted, March 31, 1794.

25. The first "Special Verdict". See Note 15 *ante*.

26. See Note (24) *ante*.

Notes: Chapter VIII

1. A Commission of Oyer and Terminer, properly speaking, gave the power to try only the offences for which True Bills were found before the Justices themselves, while a Commission of General Gaol Delivery gave the power and imposed the duty to try every one charged with a crime found in the prison which they were to deliver. As a rule, in practice the two Commissions were combined in one (occasionally a Special Commission was issued to try a certain named offender or offenders).

Along with these Commissions in later days, went Commissions of Assize and Nisi Prius enabling the Commissioners to try Civil cases. These with the standing Commission as Justice of the Peace were the five Commissions, an "Assize Judge" had when holding the "Assizes".

2. In the Commission along with the Judge who presided and had the whole direction of the Sittings, the names of certain gentlemen were added, generally Justices of the Peace, Marshall of the Court, prominent barristers, etc. These were called

"Associates" but while they occasionally sat upon the Bench by the Judge, they took no part in the proceedings—Ontario lawyers will be reminded of the Justices of the Peace sitting by the County Court Judge who is presiding at the General Sessions of the Peace.

3. The Calendar of Prisoners was returned so that the Court might know what Prisoners were in gaol accused of crime and so "deliver the gaol."

4. "Walter Roe, Clerk of the Court of Oyer and Terminer". Walter Roe was Clerk of the Peace, he prosecuted for the Crown in the Court of Quarter Sessions and was Clerk of the Court of Oyer and Terminer.

5. The murder of Wawanisse or Wawanissé (wrongly identified with Chief Wawenash, Wawanosh. *Index to Vols. 1-15, Mich. Hist. Colls.*, pp. 478-479) was one of the scandals of the day. Wawanisse, a Chippewa, tried late in June, 1792, to stab a Trader and two others in Michillimackinac, when Mr. Myers Michel overpowered him and tied his hands behind his back, being wounded in the process. He was being conducted to the Commandant Captain Edward Charlton of the 5th Foot when some of the crowd beat, kicked, stabbed and tomahawked him, bringing about his death. Seven men were in a few minutes arrested and taken to the Fort, Myers Michel, John Campbell, John Stork, George Edward Young, Barthelemi Blondeau, Etienne Campion and an engagé (i. e., an employee in the fur trade) called Lambert. A Coroner's Jury found a verdict of murder against some person or persons unknown, although the offenders were as well-known as the Fort itself. Captain Charlton was not satisfied, and caused two Justices of the Peace to take depositions: the Justices at first requested the Commandant to keep the prisoners in the Fort but the Merchants and Traders to the number of 63 joined in a petition to Charlton which is a delightful exhibition of the regard there and then held for the life of an Indian. It reads:

"To Captain Charleton Commandant of the Post of Michilimakinac Dependencies, &c., &c.,

"The humble address of the Merchants and Traders of the said Post

"SHEWETH:

"That in consequence of the unhappy and disagreeable affair which has caused the imprisonment of our fellow citizens we find ourselves under the necessity of supplicating your human interference with the Magistrates who declare their readiness if advised by you to make the town instead of the Fort the prison of all those confined for the death of the Indian who was yesterday unfortunately killed and that you may not have any cause to hestitate complying with this our humble request we each for the other do pledge ourselves that the said prisoners shall on no pretence whatsoever go out of the gates of the town but shall remain amenable to such orders that hereafter may come from Detroit respecting them. We are further induced to make this application from the knowledge we have of the irrepairable loss that must occur to them from the neglect of their affairs and of those by whom some of them are employed. Your compliance with the above request will add to the obligations already received from your constant attention to the Peace and welfare of this Post.

"We have the honour to be, Sir

"Your most obedient humble servant,

(Signed) by 63 Merchants, &c."

"Michilimakinac, 30th June 1792. *Wolford. Simcoe Papers,* (MSS.), Vol. 1, Bk. 2, p. 140.

Then the Justices of the Peace took bail for their appearance. Charlton reported the circumstances to Lieutenant Colonel R. G. England, Commanding the District, at Detroit, by letter dated at Michillimackinac, July 1, 1792. *Wolford Manor Papers (MSS),* Vol. 1, Bk. 2, page 141. *Can. Arch.,* C. 511, p. 24; 12 *Mich. Hist. Colls.,* p. 38. (In the original the Indian's name is spelled "Wawenessi").

England reported the facts to Simcoe but nothing could be done: the alleged offenders were duly admitted to Bail and it was necessary to wait for the Court of Oyer and Terminer. As will be seen from the Record nothing was effectively done about it at that court—the thought is not new if the expression is: "There is no good Indian but a dead Indian". The Grand Jury, indeed, asked that witnesses should be brought before them and the witnesses were ordered to appear at 10 a. m., September 4. Jacques Robitaille of Detroit (who was one of the Merchants and Traders of Michillimackinac who signed the Petition to Charlton for the release of the seven offenders) two sergeants, two Privates and a Drummer of the 5th Foot, gave evidence; but no Bill was found, and the seven escaped scot free.

Walter Roe, as acting Clerk of the Court under a Commission from Lieutenant Governor Simcoe, made under the direction of the Court two copies of the Presentment of the Grand Jury in the matter for the information of the Lieutenant Governor and the Chief Justice and got $2 for them. *Wolford Simcoe Papers, (MSS),* Vol. 1, Bk. 2, page 141: but nothing could be done.

6. Walter Roe, as Acting Clerk of the Crown, was the Crown Prosecutor in this Court: John White, the Attorney General, took the Court at Kingston.

7. Cutan is said to have been a coloured man—he was convicted and hanged.

8. A verdict by the Trial Jury of Homicide by Misadventure would not entitle the prisoner to be immediately discharged—not so then. It was, indeed, excusable homicide; in strict law, however, it subjected the unfortunate prisoner to the loss of his goods (originally also to the punishment of death) but in practice he obtained on paying for them a writ of Restitution of his goods and a Pardon. To save this expense, the Judge not uncommonly allowed or even directed a verdict of Not Guilty: Blackstone, *Commentaries,* Bk. IV, p. 188. The prisoner Roy was remanded to prison till he should pay this Fee. The finding of

the jury that "he did not fly for it" was necessary because under the criminal law as it then existed anyone who fled after committing an act for which he was afterwards tried, for murder etc., forfeited all his goods and chattels even if he should be acquitted. All the Proceedings were copied by Roe at an expense of £1-1-0 "for the information of His Honour the Chief Justice agreeable to an Act of the Legislature of Lower Canada then in force." *Wolford Simcoe Papers* (MSS), Vol. 1, Bk. 11, p. 141.

The "Act" meant is not a Statute of Lower Canada but the Ordinance of April 30, 1789, 29 George III, c. 3. *Ordinances, &c.*, pt. 2 pp. 225, 226: passed before the separation of the Provinces. The Acts of Lower Canada had no validity in the separate Province of Upper Canada. Roe's Bill for this prosecution was £4-19-0 and £3 13 0, in all £8 12 0 ($34.40) made up as follows: See Note 9 for Roe's bill.

9. The finding as to property was to enable the Crown to escheat and forfeit on sentence being pronounced.

Roe's Bill for prosecuting Cutan was £4-19-0 made up thus:

The King vs. Josiah Cutan	Burglary By attendance procuring depositions.	1. 1. 0.	
	By drawing indictment	1. 16. 0.	
	By attendance on Trial	2. 2. 0.	4. 19. 0.

But he copied all the proceedings as in Roy's case and got £1-1-0 for them. The remainder of his modest Bill for the Court was as follows:

The King vs. An Indian called Guillet	Murder By attendance procuring depositions	1. 1. 0.	
	By drawing indictment	1. 16. 0.	2. 17. 0.

The King vs. An Indian called Cawquochish.	Murder			
	By attendance procuring depositions	1.	1. 0.	
	By drawing indictment	1.	16. 0.	2. 17. 0.
The King vs. An Indian called Chabouquoy	Murder			
	By attendance procuring depositions.....	1.	1. 0.	
	By drawing indictment	1.	16. 0.	2. 17. 0.
The King vs. Louis Roy	Murder			
	By attendance procuring depositions.....	1.	1. 0.	
	By drawing indictment	1.	16. 0.	
	By attendance on Trial	2.	2. 0.	4. 19. 0.
The King vs. Louis Roy	Indictment. Murder			
	By precept to the Sheriff	1.	0. 0.	
	By swearing Grand Jury	1.	4. 0.	
	By Warrant to apprehend Prisoner	0.	5. 0.	
	By Three Subpoenas.	0.	9. 0.	
	By swearing three Witnesses	0.	3. 0.	
	By swearing Petty Jury	0.	12. 0.	3. 13. 0.

The King vs. An Indian called Guillet	Indictment Murder				
	By Warrant to apprehend	0.	5.	0.	0. 5. 0.
The King vs. Campbell & others	Indictment Murder				
	By six Subpoenas	0.	18.	0.	
	By swearing six Witnesses	0.	6.	0.	1. 4. 0.
The King vs. Louis Drouin & others	Indictment Murder				
	By one Subpoena	0.	3.	0.	
	By swearing one Witness	0.	1.	0.	0. 4. 0.
The King vs. Cawquochish & Chasbouquoy	Murder				
	By Warrants to apprehend 5/ each	0.	0.	0.	0. 10. 0.

Wolford Simcoe Papers, (MSS) Vol. 1, Bk 11, pp. 144, 143. His modest Bill of £28 11 0 was approved in Council, May 7, 1796, and duly paid. *do.do.do.*, p. 223.

10. The result I do not know. The Reports, if any, are not extant and the only information available is to be found in the account for Fees.

John White, the Attorney General, charged and was allowed as follows:

Aug. 28.	By Western District Commission of Oyer and Terminer of Assize & Nisi Prius	3.	12.	0.
	The King vs. John Millar, Murder, by taking depositions and arranging evidence	1.	1.	0.

By drawing indictment..... 1. 16. 0.
By attending and conducting Trial..... 2. 2. 0.
The King vs. Charles Valle, Murder. By taking depositions, and arranging evidence.. 1. 1. 0.
By drawing indictment ..... 1. 16. 0.
By attending and conducting Trial..... 2. 2. 0.
The King vs. Charles Valle, Murder. By taking depositions, and arranging evidence.. 1. 1. 0.
By drawing indictment..... 1. 16. 0.
By attending and conducting Trial..... 2. 2. 0.
29. The King vs. J. B. Chapeton, Sedition. By taking deposition & arranging evidence.. 1. 1. 0.
By drawing indictment..... 1. 16. 0.
By attending & conducting Trial..... 2. 2. 0.

Wolford Simcoe Papers, Vol. 1, Bk. 11, p. 123. This was less than $20 a case, a somewhat modest fee, but he got £45 ($180) for travelling expenses: *do.do.do.,* pp. 87, 107, 129.

11. The result I do not know. White's Bill for the Prosecution was £4. 19. 0: *do.do.do.,* p. 203. Burns received £2. 12. 0 ($10.40): *do.do.do.,* p. 201, and Roe was paid by Captain Matthew Elliott, £5. 16 8 ($23.30): *Can. Arch.* C. 249 pp. 96-98: 12 *Mich. Hist. Colls.,* p. 180 (in the latter for "Kings" read "King vs.")

12. At this Court, Thomas Ward officiated as Crier. He afterwards became a Member of the Bar of Upper Canada. *Wolford Simcoe Papers,* (MSS), Vol. 1, Bk. 11, p. 205: my *Legal Profession in Upper Canada in Early Years,* pp. 141, 171.

Susannah (or Susan) Baby was the widow of Jacques Duperon Baby, the Judge of the Common Pleas above mentioned whom she had married during Pontiac's Siege of Detroit. She was the mother of the Honourable James (or Jacques) Baby, Member of the Legislative Council of Upper Canada and Surrogate Judge. See my *Life of John Graves Simcoe,* cap. XXVII; 8 *Mich. Hist. Colls.,* Vol. 11, pp. 514, 516.

13. As a matter of curiosity, the following may be given as

showing the strictness of the "Common Law" as to *subtractio* or fleeing on an alleged commission of a crime. I take it from the Selden Society's edition of *The Eyre of Kent, 6 and 7 Edward II, A. D.* 1313-1314, London, 1910, page 94,—with the correct translation, "cum quis indictatus fuerit de bonis furatis infra precium xij d. ob. et de hoc acquietetur ad tunc si inveniatur quod se subtraxit catalla ejus confiscantur"—when one shall have been indicted of larceny of goods less in value than 12½ d. and is acquitted on that charge, yet if it be found that he absconded, his goods are confiscated.

As is said in another case—a certain man killed a stranger and immediately fled. "Ideo catalla ejus confiscantur propter fugam" —consequently his chattels are confiscate because of the flight. p. 135.

In another case, p. 145, the Judge addressing a wholly innocent man, said: "Et pur ceo qe vous fuistes vous chateux forfetz al Roi"—and because you fled your chattels are forfeited to the King.

On the other hand, one Thomas of Sarre, accused of poisoning his father but acquitted, "habuit catalla"—had his chattels, because the jury said "No" when asked by Spigurnel, J., "sil fuit"—if he fled. p. 151.

14. As indicating the sternness of the Canadian law at that time, perhaps the following may be of interest:

Joseph Willcocks, afterwards Sheriff of the Home District, an Irishman, who, in the War of 1812, deserted to the American Forces and was killed at Fort Erie, writing from York (Toronto), November 3, 1800, to his brother Richard (afterwards Sir Richard) Willcocks, Dublin, says:

"There are several Irishmen here & to the honor of our Country, the first and only Man that has been hung here was an Irishman: it happened since I came here [in 1800] it was for forgery—there was no getting a hangman untill at length another dear countryman who was in for robbery, with the promise of a Pardon & 20 Guineas to carry him out of the country filled

the office—with the most unpardonable ignorance, the Gentleman who was to die fell three times from the Gallows".

15. In the Archives Department at Toronto have just been discovered documents bearing upon the Court of Oyer and Terminer and General Gaol Delivery holden at L'Assomption, September, 1792.

The first is the Bill of Indictment for murder found against an Indian.

IN THE CASE OF PIERRE GROCHER

We have the original Indictment in this case, written on a double sheet of Foolscap as follows:

Province of Upper Canada }
District of Hesse. }

The Jurors of our Lord the King upon their Oath present that a certain Indian, called Guillet, late of Detroit, in the said District, Labourer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil on the third day of April, in the thirty-second year of the reign of our Sovereign Lord George the third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the faith, and so forth, with force and arms, at the Parish aforesaid, in the District aforesaid, in and upon one Pierre Grocher, late of Detroit aforesaid, Mariner, in the peace of God, and of our said Lord the King then and there being, feloniously wilfully, and of his malice aforethought did make an assault, and that he the said Indian man called Guillet, with a certain knife, of the value of two pence, which he the said Guillet in his right hand then and there had and held, the said Pierre Grocher, in and upon the left arm, about three inches above the Elbow of him the said Pierre Grocher, then and there feloniously wilfully and of his malice aforethought did strike and thrust, giving to the said Pierre Grocher, then and there, with the knife aforesaid, in and upon the aforesaid left arm, about three inches above the elbow of him the said Pierre Grocher, one mortal wound, of the breadth of one

and a half inch, and of the depth of two inches, of which said mortal wound the said Pierre Grocher from the said third day of April, in the year aforesaid, untill the fifteenth day of the same month of April in the year aforesaid in the District aforesaid, did Languish, and languishing did live, on which said fifteenth day of April in the year aforesaid, the said Pierre Grocher, in the District aforesaid, of the said mortal wound died;—And so the Jurors aforesaid, upon their Oath aforesaid, do say, that the said Indian Man called Guillet, the said Pierre Grocher, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder, against the peace of our said Lord the King, his Crown and dignity.

W. Roe, C. C. O. & T.

Endorsement:
District of Hesse
Our Sovn. Lord the King
vs.
A Chippoway Indian, called
Guillet
for Murder.
True Bill
James May
Foreman.

Jonathan Schieffelin	Joseph Visger
Wm. Caldwell	Chas. Girardin
Jas. Fraser	Louvigny Montigny
Jas. McDonnell,	James Allan
Chev. De Chabert	Chles. Moran
John Askin, Junr	bte le campau
François Gamelin	

Of this Indictment it is to be observed:—

1. The weapon with which the deed was committed is described and its value given. One reason is that everything which caused death intentional or accidental was Deodand, i. e., forfeited to the King (originally to God, i. e., the Church—see

Blackstone *Commentaries,* i. p. 300)—and whoever took it must account for its value.

2. The situs and extent of the wound is described with particularity—cases are on record where criminal proceedings failed from the neglect of this.

3. The Grand Jury all sign—in the usual—now the universal —practice, only the Foreman signed.

4. Some of the Grand Jury are not those named in the printed Record as constituting the Panel—consequently some must be Talesmen.

THE CASE OF DAVID LYND ALIAS JACQUO

It will be seen from the printed Record that two Indians were indicted for the murder of David Lynd alias Jacquo at the River à la Tranche. Chabouguoy and Cawquochish.

We have the Indictment against one of them, Cawquochish, which reads thus:

Province of Quebec
District of Hesse } SS.

WE JURORS for our Sovereign Lord the king, on their Oath present, that an Indian Man called Cawquochish, of the River à La Tranche in the said District, Labourer, not having the fear of god before his eyes, but being moved and seduced by the instigation of the divil, on the twenty ninth day of January, on the thirtieth year of the reign of our Sovereign Lord George the third, by the grace of god, of Great Britain, France and Ireland, King, Defender of the faith and so forth, on the said River à la Tranche in the said District, with force and arms, in and upon one David Lynd, alias Jacquo, late of the said River à la Tranche, in the District aforesaid, Trader, in the peace of God, and of our said Lord the King, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Cawquochish, with a certain knife, made of iron and steel, of the value of six pence, which he the said Cawquochish, then and there had and held, him the said David Lynd, alias Jacqou, in and upon the left side of the body

of him the said David Lynd, alias Jacquo, then and there feloniously, wilfully and of his malice aforethought, did strike, thrust, stab and penetrate, giving unto the said David Lynd, alias Jacquo, then and there, with the knife drawn as aforesaid, in and upon the left side of the body of him the said David Lynd, alias Jacquo, one mortal wound of the breadth of one inch, and the depth of six inches, of which said mortal wound, he the said David Lynd, alias Jacquo, at the said River à la Tranche, in the District aforesaid, instantly died—And so the Jurors aforesaid, upon their Oath aforesaid, so say, that the said Cawquochish, him the said David Lynd, alias Jacquo, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder against the peace of our said Lord the King, his Crown and Dignity.

Witness
Jean Bre. Renaud,
Dr. Dumoulin,
Hugh Holmes.

W. Roe, C. C.

(Endorsement)
District of Hesse.
Our Sovereign Lord the King
vs.
Cawquochish, an Indian,
for Murder
A True Bill
Richard Pollard,
Foreman,
James Abbott
Geo. McDougall
J. Baby,
Jas. Fraser
John Askin Jr,
David Robertson
Joseph Thibault,
C. Girardin
John Martin,
Angus Mackintosh,
George Lyons,
Celoron
H. D. Bellecour
Geo. Leith,
James May,
Jacob Visger
James McDonnell,
William Park,
Alexr McKenzie
Chev. De Chabert

Note that in this Indictment

1. The weapon is described particularly—it is Deodand.

2. The names of the witnesses are written on the face of the Bill instead of on the back, the present universal practice.

3. The Grand Jury all endorse the Bill.

4. Some of them are Talesmen.

We have not the indictment which we know from the account of Walter Roe to have been found against the other Indian Chabouguy—nor have we the indictment against Louis Roy for the death of Pierre LaLonde but we have an information by LaLonde concerning a previous attack on him by a "sauvage," i. e., an Indian.

Aujourd'hui, trente de juin, mil sept cent quatre vingt douze est comparu pardevant moy Adhémar St. Martin juge de paix du District d' Hesse, Joseph LaLonde, qui apres avoir fait serment sur les Saints Evangiles, declare qu'hier, Le vingt neuf, ayant entendu du bruit dans La maison de Mr. Marchessault, m'en suis allé pour voir ce que c'etoit. Un sauvage avec un couteau à la main s'est trouvé à ma rencontre, et m'a voulu darder, j'ay parré le coup, en me retirant Le coup a passe sous les bras, et je me suis retiré et ne dit plus rien, et a declare ne savoir signer a fait sa marque ordinaire. A Michilimakinac, Le hour et an que dessus.

X pour marque de Joseph LaLonde

Vraye copie
Adhémar St. Martin, J. P.

Which translated reads thus:

Today, the thirtieth of June, one thousand seven hundred and ninety two, appeared before me, Adhémar St. Martin, Justice of the Peace of the District of Hesse, Joseph LaLonde, who after having taken oath on the Holy Evangelists, declares that yesterday the twenty ninth, having heard a noise in the house of Mr. Marchessault I went to see what it was. A savage with a knife in his hand met me and tried to stab me; I parried the blow, when retreating the stab passed under my arms, and I left.

And further he says not. And declaring that he does not know how to sign, has made his ordinary mark. At Michilimakinac, the day and year hereunder.

X for mark of Joseph LaLonde.

True copy.

Adhémar St. Martin, J. P.

We also have a document relating to the Court of General Quarter Sessions of the Peace for the Western District holden at Detroit, July, 1795.

GRAND JURY'S PRESENTMENT

According to English practice the Grand Jury have the right to state to the Court and through the Court to the Administration any facts and make recommendations in respect of matters of importance to the public welfare. We Canadian Judges, generally, warn the Grand Jury not to include in their Presentment anything of a political nature and if anything of the kind should appear we should refuse to accept it.

The Act of (1793) 33 George III, c. 6, s. 4 (U. C.) directed that the Court of General Sessions of the Peace for the Western District should sit at Detroit. Consequently the Presentment is dated at Detroit.

It reads thus:

The Grand Jurors of our Sovereign Lord the King, upon their Oaths present

That the Treasurer holding the public monies, arising from Assessments, &c, be directed to keep a Register for the inspection, and satisfaction of the Public, to shew in what manner, and to what purposes the said monies have been applied, and that all those who have not as yet paid their proportion of Assessments, be compelled to do so, if they Refuse.

That a particular enquiry, should be made, into the affair of the Murder of One Richard at Sandusky, last winter and that the person or persons concerned in the same, should be apprehended if possible, and punished as the law directs.

That several complaints have been made by Traders at Sandusky, that they have been Robbed by the Indians of their property, and their lives threatened, and that the Indians have been excited to these Atrocities, by being offered bribes and rewards. It is earnestly recommended, that a strict inquiry should be made into the merits of these Complaints, and that any person or persons who can be convicted of such inhuman practices, be proceeded against to the utmost vigor of the Laws.

That the Magistrates should strongly recommend to every order of Men, when they are, or think themselves injured, to apply to the laws for redress, and not have recourse to underhand Methods, as is but too often the Case to do themselves Justice.

That it appears from James Melvin's Affidavit herewith, that a Horse the property of George McDougall, was unlawfully seised upon, at the Huron Village, near the Mouth of Detroit River, which Horse some days ago was found in the possession of one Adam Brown; that the said Adam Brown, with two other Gentlemen, mentioned in said affidavit, seem to have been, if not, the real Actors, at least the principal Prompters in this Affair —That this matter should be strictly enquired into, and the trespassers stigmatized and punished as they deserve.

That whereas it has come to Our Knowledge, that an Indian was found dead near the House of Mr. Fisher, who it was supposed, had been Murdered—That some inquiry be therefore made in this affair, as the innocent may suffer from the Vengeance and threats of the Indians.

That they therefore Conclude, by earnestly recommending to the Worshipfull Bench to enforce this Excellencies proclamation for the Suppression of immorality and Vice, and remove as much as possible the grevancies already presented by former Grand Juries.

Detroit, 18th July, 1795

signed

Hugh Heward	Francois Gamelin
Alexr McKenzie	Joseph Thibault
Alex'r Duff	Dom'que Labrosse
Wm. Christie	Wm. Groesbeck
Robt. McDougall	B'te Meloche
J. Bondy	J. F. Frerot

A true copy of the Original filed on Record in the Offie of
W. Roe, C. Pe & Sess. W. D.

An interesting document from a Constitutional point of view is the Presentment of the Grand Jury at the Court of General Quarter Sessions of the Peace for the Western District holden at Detroit, April, 1795.

It is as follows:

PROVINCE OF UPPER CANADA
WESTERN DISTRICT

THE GRAND JURORS for our Sovereign LORD THE KING, PRESENT

THAT, sundry Sums of Money under the denomination of Court Fees have from time to time been Exacted, and Paid by Persons, Prosecuting for the recovery of Debts, &ca, in his Majestys Court of Common Pleas, for the Western District, formerly the District of Hesse, "Which sums of Money so Collected, Accumulated and Deposited, in the hands of the First Judge (William Dummer Powell, Esquire) of Said Court, towards defraying the Expences of Errecting and Building Court Houses, Prisons, &ca., within the aforesaid District.

THAT, in Consideration of the inability of the Inhabitants of this Country to support the Necessary Expenditures established by Law, They urge the necessity; That immediate application be made by the Worshipful Bench, to the Executive Officer of the Crown, in Order that the Public Property so Deposited, may be refunded, and applied to the purposes aforesaid."

THAT it is Consistent with the Law and Liberty of all his Majestys Subjects; That no Subject can be Constrained to Pay

any Aids or Taxes even for the Defence of the Realm, or the support of Government, but such as are imposed by his own consent, or by that of His Representatives in Parliament." And Whereas The Inhabitants of the Rivers Sinclair, Raisen & Huron, are actually or should be Assessed, or Taxed, as Others his Majestys Liege Subjects within the Province of Upper Canada: They should also be equally entitled to a free Representation, Which They have heretofore, not been considered as entitled to, from and on Account, of the Line of Limitation, and the Tenor on which they hold Their Lands—They therefore recommend to the Worshipful Bench, The propriety and absolute necessity, of easing the minds of such his Majesty's Subjects, residing at the above Mentioned Places, by adopting such Measures as to entitle Them to such Privileges and Immunities as all other his Majesty's Subjects enjoy and boast of, as Their Inherent right.

Jury Room, Detroit,
Day of April, 1798

(signed) I. Schieffelin

James Thompson — Antoine Labadie
Jacob Harsen — Joseph Riget
Jas. McDonnell — John McGregor
Wm. Shepherd — Jas. Fraser
J. Bte Baby — Jean Bte Cicot
Wm. Hands — John Martin.

A true Copy of the Original
filed on Record in the Office of
W. Roe, Clk Pe & Sess., W. D.

The Court was held at Detroit under the Act of 1793, 33 George III, c. 6 (U. C.)

There is the Constitutional point raised of which so much was heard at and about July 4, 1776, and for years before—"No Taxation without Representation."

The main difference was that in the Thirteen Colonies, Representation was not really desired and the maxim was appealed to to prevent Taxation: in and near Detroit, the Taxation was not

really objected to and the maxim was appealed to to obtain Representation.

When Lieutenant Governor John Graves Simcoe issued his Proclamation at Kingston, Upper Canada, July 16, 1792, forming the Counties and Constituencies of Upper Canada, he made the County of Essex as follows:

"That the eighteenth of the said counties be hereafter called by the name of the county of Essex; which county is to be bounded on the east by the county of Suffolk, on the south by lake Erie, on the west by the river Detroit to Maisonville's Mill, from thence by a line running parallel to the river Detroit and Lake St. Clair, at the distance of four miles, until meets the river La Tranche or Thames, thence up the said river to the northwest boundary of the county of Suffolk."

Essex and Suffolk further east were to have a member of the House of Assembly: but no one west of the Detroit River was in any constituency or had a vote, *Hinc illae lacrymae.*

The Sinclair River was, of course, the River St. Clair: for the Huron River, see *9 Michigan Pioneer and Historical Collections,* p. 171: 1 *do. do.,* p. 330, &c., &c.

It may be of interest to note the cost of proceedings in those days—in every Court of O. & T. and G. G. D. at that time—in the first place, the Attorney General, John White, was paid for preparing the Commission of Oyer and Terminer and General Gaol Delivery to the Judge which was the authority for holding the Criminal Assizes, £1.16.0 (36 s. sterling, $10). See *Wolford Simcoe Papers,* MSS., vol. 1, Book 11, p. 47.

2. William Jarvis, the Secretary and Register of the Province for Sealing Commission £1.10.0, Registering Commission 11/6, £2.1.6, $9.22. *do. do.,* p. 67.

3. Colonel John Graves Simcoe Lieutenant Governor Fee on Seal £3.10.0 ($15.55). *do. do.,* p. 65.

4. David Burns, Clerk of the Crown and Common Pleas Precept to Sheriff £1.0.0 ($4.44). *do. do.,* p. 49.

5. The Judges' Travelling expenses, £25.0.0 ($111.11).

At the Fall Assizes held at L'Assomption, October 14, 1793, John White, Attorney General, prosecuted

Rex v William Wright for Murder, Fees £4.19.0 ($27.50).
Rex v Gregory Fortune for Burglary, Fees £3.18.0 ($21.67).
Rex v Joseph Murphy for Larceny, Fees £3.18.0 ($21.67).
Also Travelling Expenses £45.0.0 ($200.00) *do., do., do.*, p. 61.

David Burns Clerk Crown and Common Pleas, Travelling expenses £25 ($111.11).

Fees in Rex v William Wright £2.17.0 ($13.67)
Fees in Rex v Gregory Fortune £0.18.0 ($4.00).
Fees in Rex v Joseph Murphy £2.4.0 ($9.77).
do., do., do., p. 99.

The Court of Oyer and Terminer and General Gaol Delivery was held at L'Assomption, August 28, 1794.

John White received

Rex v John Miller for Murder, Fees £4.19.0 ($27.50).
Rex v Charles Valle for Murder, Fees £4.19.0 ($27.50).
Rex v Chapeton for Sedition, Fees £4.19.0 ($27.50).
Also travelling expenses £45 ($200) *do., do., do.*, p. 123, 129.

David Burns

Rex v John Miller £2.10 ($11.11)
Rex v Charles Valle £1.1.6 ($4.77)
Rex v J. V. Chapeton £2.4.6 ($10.00)
Also travelling expenses £25 ($111.11) *do., do., do.*, p. 163.

The Court of Oyer and Terminer and General Gaol Delivery held at L'Assomption, October 17, 1795, John White received

Rex v Mishinaway, Murder, (An Indian acquitted) (£4.19.0) ($27.50)
Rex v Pierre Labadie, Misdemeanor, £4.19.0 ($27.50)
Rex v Susamuch Baby, Nuisance (?)
do. do., do., p. 203.

David Burns in all £1.18 ($4.80).
Travelling Expenses £25 ($111.11).

Notes: Chapter IX

1. (1794) 34 George III, c. 2, (U. C.). This is given as Assented to July 9, 1794, in all the printed copies I have seen, but the certified Proceedings of the Legislative Council in the Colonial Office, London, make it certain that the true date is Monday, July 7, 1794, 7 *Ont. Arch. Rep.*, (1910), p. 53.

2. (1794) 34 George III, c. 3 (U. C.)

3. For an account of Simcoe see my *Life of John Graves Simcoe*, Toronto, 1926.

4. No complaint was made of Powell, but some of the Judges in the other Districts, the Midland (Kingston) and Home (Niagara) Districts had given judgments injurious to the farmers which were believed not to be such as a lawyer judge would have given.

5. Upper Canada had to wait until 1837 for a Court with Equitable Jurisdiction.

6. The provision for the notice being in French was made for the convenience and advantage of the French Canadians, in and near Detroit—the notice in English was

"A. B. You are served with this process, to the intent that you may either in person or by your Attorney, appear in His Majesty's Court of King's Bench, at the return thereof being the—day of—in order to your defence in this act".

"And when any party, defendant, is a Canadian subject by treaty, or the son or daughter of such Canadian subject, the like notice shall be written in the French language.

"A. B. Ill vous est enjoint et ordonne de comparoitre personellement ou par procureur a la Cour du Banc do Roy, a l'expiration de ce writ qui sera le jour pour repondre a cette action". These were abolished by the Act (1797) 37 Geo. III, c. 4 (U. C.).

7. A Provision that the Statutes of Limitations as in England should be in force in the Province is contained in Section 14 of

the Act: and Section 15 provides for payment of money into Court on obtaining a Rule of Court to that effect.

No doubt this action is the action of William Forsyth v. M. Elliot already in the Court of Common Pleas. January 1, 1794, the summons was returned in that Court. David Cowan appeared as attorney for Elliott, and asked for delay to obtain legal advice: Elliott seems to have communicated with John White at Newark, the only other lawyer besides Walter Roe in the Province. White in his Diary (unpublished MSS) says under date, February 16, 1794, "The Express from Detroit arrived this day": on Monday, February 24, "Finished my Letters for the Express except one": March 4, Elliott had expected a letter but the Express had not arrived—so the case stood over till next Court day: March 18 Pleas filed by Cowan and Replication by Roe: it was to be tried March 25, but stood over and again March 31, this time till the July Term which never arrived. Accordingly the case came into the King's Bench and was to be tried by a Jury at a Court of Assize and Nisi Prius. White wanted the Pleadings in proper shape—he was a lawyer and Cowan was not—and obtained this Rule.

Probably the case was tried and disposed of—we hear no more of it.

8. During the whole Period, William Dummer Powell was the sole Justice, Osgoode having gone to Quebec and Elmsley his successor not having arrived. But in some of the terms, the Hon. Peter Russell, the Receiver General, a man "bred to physic", received a Special Commission as Justice *ad hoc* and sat with him. Wholly ignorant of law, he had the good sense to leave everything to Osgoode.

9. While the Court and Gaol of the Western District were ordered to be built at L'Assumption—in 1793, by the Act, 33 George III, c. 6, s. 4 (U. C.), it was enacted that the Court of General Quarter Sessions of the Peace for the Western District should be holden four times a year in the Town of Detroit, and by section 5 that a Court of Special Sessions of the Peace should

be holden at the Town of Michilimackinac every year beginning on the Second Tuesday of July. These provisions were of course repealed on the British evacuation: by the Act (1796) 36 George III, c. 4, s. 1, (U. C.) the General Quarter Sessions were to sit in the "Parish of Assumption". By the same Act which came into force, June 3, it was enacted that the District Court should sit in the same place as the General Quarter Sessions "as it seems not to be any longer expedient to hold the said Court in the Town of Detroit".

It had been agreed by Jay's Treaty that this territory should be given up by Britain in 1796.

10. The appointment of James Harfly, July 9, 1794, appears from the records in the Canadian Archives at Ottawa. I have to thank Mr. F. J. Audet of the Archives Department for this and much other information.

The Surrogate Courts were established in 1793 by the Act 33 George III. c. 8 (U. C.), Hon. James Baby was commissioned as Surrogate Judge, i. e., Judge of the Surrogate Court of the Western District, April 7, 1794, *Wolford Simcoe Papers (MSS.)*, vol. 1, Bk. 11, pp. 87, 91, 95.

11. Cap. X, post. p.

12. In one case during the Period the Court did try a criminal case *en Banc*. Isaac Swayze, a Member of the Legislative Assembly was charged with sedition—the Attorney General laid a criminal Information *ex officio* against him—he was tried before the Court *en banc*, Powell and Russell and a Jury, Saturday, May 2, 1795, and found Guilty; bound over to appear next Term for sentence, he appeared, July 20, remanded, July 24, and was then sentenced to pay a fine of £10 and to enter into recognizance for good behaviour for two years, which he did.

Another case was that of David Ranson for smuggling—he was acquitted, November 7, 1795.

Notes: Chapter X

1. By the Royal Proclamation of October 7, 1763, the "Government of Quebec" was made to extend west to a "Line drawn from . . . . . the south end of the Lake Nipissim (Nipissing) . . . . crossing the River St. Lawrence in 45 Degrees of North Latitude", i. e., near the town of Cornwall; Shortt and Doughty, *Documents relating to the Constitutional History of Canada, 1759-1791,* 2nd Edit., Ottawa, 1918, pp. 163, 164. This of course included a part of this territory; but by the Quebec Act of 1774, 14 George III, c. 83, s. 1, the Province of Quebec was made to contain all the territory which was afterwards Upper Canada and much more—a western boundary being the Mississippi and a southern, the Ohio, *do. do.,* p. 570.

By the time Upper Canada came to be formed, 1791, the American Revolution had taken place and Britain had by the Treaty of Paris 1783 ceded much of this territory to the United States but she still held *de facto* if not *de jure,* many border Posts and indeterminate adjoining territory—Michillimackinac, Detroit, Niagara, Oswegatchie, Pointe au Fer, Dutchman's Point.

The enormous Province of Quebec was divided into the Provinces of Upper Canada and Lower Canada by Order in Council, August 24, 1791; and the separate administration provided for by the Canada or Constitutional Act, 1791, 31 George III, c. 31 became effective by General Alured Clarke's Proclamation (of November 18) on December 26, 1791. *do. do.,* pp. 1031, *sqq.* Doughty and McArthur, *Documents relating to the Constitutional History of Canada,* 1791-1818, Ottawa, 1914, pp. 55-57.

2. "Equity" in this connection means, of course, the law administered by the Court of Chancery.

3. We shall see *infrâ* in the Text that there were Prerogative Courts in England—and the connection of these with the Prerogative Courts in Canada.

4. See a Paper by Judge Panet furnished to a Committee of

Council relating to the Courts of Justice in 1786, 7. Shortt and Doughty, *op. cit.*, pp. 894, 896.

5. *do., do.*, pp. 205 *sqq.*

6. Technically a "Will" dealt with land, a "Testament" with personalty; but the distinction has long been disregarded.

7. See the Royal Instructions to Murray of December 7, 1763; Shortt and Doughty, *op. cit.*, pp. 181, *sqq.*, esp. at p. 192. While the Church of England in the Colony more than once attempted to obtain the power to issue Marriage Licenses as in England—unsuccessfully, be it said—there is no record of any attempt by the Bishops to hold Prerogative or Probate Courts.

8. "Surrogate" is one that is substituted or appointed in the room of another, as by a Bishop, Chancellor, Judge, &c. "Tomlins Law Dictionary, *sub voc.;* "Surrogate". "The Exhibiting and proving (of) Wills and Testaments before the ecclesiastical judge delegated by the Bishop, who is Ordinary of the place where the party dies *"do. do. sub voce* "Probate of Testaments". "Bishops have power to grant Licenses for the Marriage of persons". *do. do. sub voce.* "Licence of Marriage".

Our Ontario Surrogate Courts are not properly speaking Courts of Surrogates—the Judges derive their authority from the Crown direct and not from an individual.

9. This was the practice at least with the Judge Surrogate of Montreal Judge (Captain) Fraser). Judge Panet cannot speak for Quebec; but there can be little if any doubt that the same practice prevailed at Quebec.

We still require security from Administrators—"Administration Bonds": in many of the United States security is required even from Executors unless the Will otherwise directs.

10. 1777, 17 George III, c. 1. "An Ordinance for establishing Courts of Civil Judicature in the Province of Quebec" passed February 25, 1777.

c. 2. "An Ordinance to regulate the Proceedings in the Courts

of Civil Judicature in the Province of Quebec" passed February 25, 1777.

C. 5. "An Ordinance for establishing Courts of Criminal Jurisdiction in the Province of Quebec", passed, March 4, 1777.

C. 2. was extended January 16, 1779, 19 George III, c. 1. January 20, 1781, 21 George III., c. 1: February 5, 1783, 23 George III, c. 1.

11. See Judge Panet's Paper, Shortt and Doughty, *op. cit.*, pp. 895, 898—the contemporary translation into English leaves much to be desired.

12. *op. cit.*, p. 879. Report of Committee of the Council relating to the Courts of Justice, January 11, 1787. See also *Canadian Archives*, Q. 27, I. p. 185: Q. 56, III, p. 773.

13. For this Proclamation dated at Quebec, July 24, 1788 and headed "Patent Creating New Districts, Num. 1198"; see Shortt and Doughty, *op. cit.*, pp. 953, 4: *Fourth Report of the Bureau of Archives . . . . Ontario"*, 1906, Toronto, 1907, pp. 157, 8: *Canadian Archives*, Q. 39, p. 122. This was issued in accordance with the Ordinance of April 30, 1787, 27 George III, c. 4. In addition to the four Districts in the "Upper Country", a District of Gaspé was formed in the far east.

14. No statutory authority has been found for the erection of these Courts: it is probable that Dorchester exercised the Royal Prerogative which was undoubtedly sufficient to justify the erection of such Courts.

15. In each of the Districts three laymen were appointed: those in Hesse did not act and one lawyer, William Dummer Powell, was appointed "First Judge" with the powers of three: he was sole Judge in that Court during its whole existence: in the other three Courts, the Judges were always laymen. The Courts were abolished by the Judicature Act of 1794, 34 George III, C. 2, (U. C.)

16. The preamble of this Act is exceedingly interesting and will bear repetition:

"WHEREAS by an Act . . . (the Quebec Act of 1774) it was . . . provided 'That in all matters of controversy relative to property and civil rights, resort should be had to the Laws of Canada as the rule for the decision of the same'; such Provision being manifestly and avowedly intended for the accommodation of His Majesty's Canadian Subjects: AND WHEREAS, since the passing of the Act aforesaid, that part of the late Province of Quebec, now comprehended within the Province of Upper Canada, having become inhabited principally by British Subjects, born and educated in Countries where the English Laws were established, and who are unaccustomed to the Laws of Canada, it is inexpedient that the Provision aforesaid, contained in the said Act of the fourteenth year of his present Majesty, should be continued in this Province".

It is quite true that the Quebec Act was passed to please the French-Canadians: and that the great majority of the inhabitants of Upper Canada came from the American Colonies, were English-speaking and had no love for French Canadian laws or customs.

17. The first Court in Upper Canada with power to grant Letters of Probate or Administration was erected in 1793 by the Act (1793), 33 George III, c. 8, (U. C.) which created a central Court of Probate with Surrogate Courts in every District.

18. For a sketch of his life see my *The Life of William Dummer Powell . . .*, Lansing, Michigan Historical Commission, 1924.

19. This Record was discovered by Miss Burton in the Registry Office at Chatham: it is in part of a Book, foolscap size, used in the Registry Office under circumstances indicated by the following Memorandum written in it: "From the difficulty of procuring either a Book or writing-paper during the Summer, 1813, the remainder of this Book was appropriated for the Register of the County of Kent, Libr. B.

Sandwich, May 20, 1813. Richd Dolland Regr. "

20. Without a Special Commission as such and acting on his Commission as First Judge of the Court of Common Pleas.

21. I translate as literally as possible preserving the sense:

2nd July, 1789

"Province of Quebec
District of Hesse
SS.

To the Honourable William Dummer Powell, Esquire, Judge for the District of Hesse and dependencies, &c., &c.

Sir:

Humbly prays Jacques Campau as well in his own name as in the name of the co-heirs of the succession of the late Jacques Campau, their father, that it may be permitted and allowed to them to make a General Inventory of the effects, moveable and immoveable, of the said succession—and that consent be given for an assembly of relatives and friends to proceed to the said Inventory in the surest and most convenient method: in respect to four minors, their brothers and sister that there may be made a Tuteur and Tuteur Subrogé to be witness of an accurate account in said Inventory.

"Your suppliant awaits justice at your hands continually praying for your health and prosperity, he has the honor to be with respect

"At Detroit, District of Hesse
July 1, 1789

"Sir

"Your very humble and very obedient servant Jacques Campau."

The orthography, &c., of the original with all its errors have been strictly followed.

22. "Tuteur" is not our Tutor—"Tuteur" is defined by Littré as "Celui qui est chargé d'une tutelle"—he who is charged with a Tutelle: "Tutelle" is "Autorité donnée d'après la loi à l'effect d'avoir soin de la personne et des biens d'un mineur ou d'un interdit"—authority given according to law with the effect of having care of the person and estate of a minor or of one inhibited. "Tuteur Subrogé" is "Celui qui est nommé par les parents

et par le juge pour veiller aux interêts du mineur en tutelle et surtout pour défendre ses droits quand les interêts du mineur et de son tuteur sont opposés. Dans toute tutelle il y aura un subrogé tuteur nommé par le conseil de famille"—he who is named by the relatives and by the judge to watch over the interests of the minor in tutelage, and especially to defend his rights when the interests of the minor and his tuteur are opposed. In every guardianship there is a Subroge Tuteur named by the Family Council.

23. "Province of Quebec
District Hesse SS. } This day, July 2, 1789, in consequence of a Petition of Jacques Campau, Jr., that there should be made an Inventory of the estate of the late Jacques Campau, the Honorable William Dummer Powell, Judge for the District of Hesse directing that there should be held a meeting of relatives and friends to proceed to the election of a Tuteur and a Subrogé Tuteur in respect of the minors—have appeared at the residence of the Honorable William Dummer Powell, Esquire, Judge for the above named District, Messrs. Simon Campau and Jean Baptiste Campau, unless of the said minors, Messrs. Baptiste Campau their cousin, Messrs. William St. Bernard, Charles Morran and Baptiste Meloches (by Baptiste Peltier), connections, who after being sworn by Mr. William D. Powell to give good and true advice upon the election of a Tuteur and Subrogé Tuteur to the said minors, have named their brother, Mr. Jacques Campau, Tuteur and their uncle, Mr. Simon Campau, Subroge Tuteur, who have accepted and taken oath administered by the said Mr. Wm. D. Powell to act and represent the rights of the said minors in the said Inventory and to realize on their rights and do their duty according to the tenor of their oath—and have signed or made their mark.

Wm. Dummer Powell J(udge) C(ommon) P(leas)
"T(homas) Smith, Cl(er)k

"Jacques Campau
"&c. &c."

The age at which one ceased to be a minor was in French Canada 25 years, but by one of the first Ordinances of the Conqueror this was changed to conform with the English Law. The Ordinance of Murray in Council at Quebec, November 6, 1764, directed "That from and after the first Day of January, 1765, every Person arrived at the Age of Twenty-one years shall be deemed for the future of full Age and Maturity". This was the fifth Ordinance passed after the Cession of Canada, the first being dated September 14, 1764.

I use the technical terms "Tuteur" and "Subrogé Tuteur," throughout to avoid error and unfounded connotation: but the contempory translation into English reads "Guardian" and "Surrogated Guardian."

24. "Socia" is of course "Saucier" and "Segan," "Seguin".

25. Spelled in the official record, "Gouyeux", "Goyeaux", "Gyeaux", "Gouyeaux"—probably "Joyeux" would be the modern spelling.

26. He signs "Joseph pouget" and Pouget was undoubtedly the real name. See 10 *Michigan Pioneer and Historical Collections,* p. 402.

27. The names are sometimes spelled differently in the record and the signatures: it is not easy to make them out.

What I have called "Morors" looks like that in the signature, in the record like "Mutton"; the signature is plainly "droulliot", in the record as plainly "Droullyard" (Drouillard was a well known Detroit name): the signature is plainly "Pouget"—see note (26) *supra*—the record "Pouchet"; "Roy" is sometimes "Roi".

28. Walter Roe was the only regular lawyer in the enormous territory afterwards Upper Canada at the time and until John White the first Attorney General of Upper Canada arrived in the summer of 1792: Powell was a lawyer regularly bred and licensed.

29. Our "Curator" not having quite the same connotation, I

use the technical term "Curateur" throughout, except where the English form is used in the record.

30. While James Fraser is in one place called a "Creditior" of Casety, it appears in the fuller entry that he was "Substitute for Edward William Gray, Esquire of Montreal, Attorney by Procuation to Samuel Judah of the City and State of New York, Merchant": Gray was the Sheriff at Montreal.

31. There is the usual difference in spelling "Godefroy" becomes "Godefroi", "Genié", "Géné", &c., &c.

32. This indicates that a widow was considered to have a *quasi* right to be "Curateur"—compare the case of Therese Barthe, widow of John Casety, *suprâ*.

33. See Bingham's *Law of Infancy and Coverture*, London, 1816, p. 149. Blackstone's *Commentaries*, Bk. 1, p. 461: "In default of father or mother the Ordinary usually assigns some discreet persons to take care of the infants' personal estate and to provide for his maintenance and education". The note reads "(8) It may be questionable whether the Ordinary would be permitted to interfere further than to appoint *ad litem* (i. e. to conduct a law suit for the infant): 3 Atkins, 631: Burr., 1436" —and this seems the better opinion.

34. This was, of course, in pursuance of the Royal Instructions of September 16, 1791, to Lord Dorchester Governor-in-Chief, which Simcoe was instructed to observe: "It is . . . Our Will and Pleasure to reserve to you, the granting of Licenses for Marriage, Letters of Administration and Probate of Wills. . ." Doughty and McArthur: *Documents relating to the Constitutional History of Canada*, 1791-1918, Ottawa, 1914, pp. 45, 55.

35. Our expression, "Surrogate Courts," from the fact that the Judge in that Court is the "Surrogate" of the Lieutenant Governor, begins with this Statute. This fact also explains why "Surrogate Court" Judges are appointed by the Lieutenant-Governor-in-Council and not by the Dominion.

36. The lands of intestates descended according to law without administration until the year 1886, when the Devolution of

Estates Act, 49 Vict., C. 22, (Ont.), made lands of intestates follow personalty into the hands of Administrators.

So also the lands left by will were made to pass into the hands of the Executors—and wills no longer operate *proprio vigore*.

37. The title of the book is:

"REGISTER
of his Majesty's
PREROGATIVE COURT
for the
DISTRICT of HESSE
2nd of July, 1789
T. S."

"T. S." means Thomas Smith the first Clerk of the Court of Common Pleas for the District of Hesse and of this Court. The record is in fairly good French when French Canadians are concerned, in good English where the parties are English speaking.

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